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PACIFIC SALMON TREATY NEGOTIATIONS

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AND NATURAL RESOURCES  
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OF THE  
COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS  
SECOND SESSION  
ON

THE FUTURE OF THE PACIFIC SALMON TREATY AND  
ITS LIKELIHOOD OF ACHIEVING THE GOALS OF  
CONSERVING PACIFIC SALMON STOCKS IN A MANNER  
EQUITABLE TO BOTH CANADA AND THE UNITED STATES

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AUGUST 2, 1994

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Serial No. 103-121

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Printed for the use of the Committee on Merchant Marine and Fisheries



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# PACIFIC SALMON TREATY NEGOTIATIONS

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TUESDAY, AUGUST 2, 1994

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES, JOINT WITH SUBCOMMITTEE ON FISHERIES MANAGEMENT, COMMITTEE ON MERCHANT MARINE AND FISHERIES,

*Washington, DC.*

The Subcommittees met, pursuant to call, at 2:00 p.m., in room 1334, Rayburn House Office Building, Hon. Thomas J. Manton [Chairman of the Subcommittee on Fisheries Management] presiding.

Members present: Representatives Pallone, Unsoeld, Furse, Hamburg and Young from the Subcommittee on Environment and Natural Resources; Representatives Manton, Unsoeld, Hamburg, Cantwell, Pallone, Young and Kingston from the Subcommittee on Fisheries Management.

Staff present: Subcommittee on Fisheries Management: Jim Mathews, Staff Director; Greg Lambert, Counsel; Lori Rosa, Legislative Clerk; Rod Moore, Minority Professional Staff; Subcommittee on Environment and Natural Resources: Jean Flemma, Dan Ashe, Staff Director; Marvadell Zeeb, Legislative Clerk; Finlay Anderson, Sea Grant Intern; Dave Whaley and Sharon McKenna, Minority Professional Staff.

Mr. MANTON. Ladies and gentlemen, the Subcommittee on Fisheries Management in conjunction with the Natural Resources Subcommittee will come to order.

Chairman Studds is otherwise occupied on the Floor with maritime matters as we speak.

The Chair will recognize the gentleman from Washington, Mr. Swift, for a statement, and then the Chair will have its own opening statement. I know Mr. Swift has other pressing business and we want to accommodate him. Mr. Swift.

## STATEMENT OF HON. AL SWIFT, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. SWIFT. Well, Mr. Chairman, thank you very much for that extra special courtesy, and I will be brief. I am here to testify on behalf of the commercial fishermen who reside in the second congressional district of Washington State. The fishery in my district is very dependent on the Fraser River salmon run.

Fraser River fishery has a long history and the United States has made great efforts over the years to preserve that fishery. As you know, the Fraser River is essentially in Canada, but it is joint-

ly fished. And the United States has made an effort to preserve that fishery, even though it lies in a foreign country.

The United States has contributed machinery and money and agreed to greatly reduced catches to help restore the Fraser River runs after a disastrous landslide occurred in the Fraser River in 1913, and at other times throughout the history. Without this country's help, the near-record runs that have been recorded in the last few years could not have occurred.

Another significant factor of the fishery in the Northwest is that when Judge Boldt determined in 1974 that "in common" as used in a series of mid-19th century treaties meant native Americans were entitled to catch 50 percent of the fish, that was very difficult for the nontreaty fishermen to accept. But now some 20 years later, the United States versus Washington was finally decided by the U.S. Supreme Court. And most fishermen have accepted that way of life and that interpretation of those treaties.

There is another problem that has cropped up more recently. That is the problem of the Columbia Snake River System salmon, which are listed under the Endangered Species Act. The fishermen of the second district feel that some parties are willing to trade the Fraser River salmon catch to the Canadians for greater escapement of the Columbia and Snake River salmon.

And now there is a new twist on the old Boldt formula that threatens to make the situation even more difficult. Many of the second district fishermen have also been led to believe that there is one possible negotiating strategy that would further reduce the nontreaty catch of the U.S. share of the Fraser River steelhead, while allowing the Treaty fishermen to continue to catch 50 percent of the U.S. share of the Fraser River salmon.

It would reduce the total U.S. catch but guarantee the Treaty fisherman would get 50 percent of the original catch, the catch from which the reduction would take place, which means that nontreaty fishermen would have to absorb the entire reduction that the United States would agree to out of their half of the fish.

I have urged this Administration to continue the negotiations this fall with a commitment to protecting a fair share of the Fraser River salmon fisheries for the benefit of Treaty and non-treaty fishermen alike. Fishermen, both Treaty and non-treaty, have every reason to expect a fair harvest of Fraser River salmon under the U.S./Canada Treaty given the dramatic growth in its productivity. But if it should finally be decided there is any benefit to be achieved through trading away some of our Fraser River fishery, then the burden must be shared equally by Treaty and non-treaty fishermen.

With that, Mr. Chairman, I would ask unanimous consent to submit for the record testimony of the Purse Seine Vessel Owners Association, which represents a significant number of fishermen in the second district in Washington State.

Mr. MANTON. Without objection, so ordered.

[The statement can be found at the end of the hearing.]

**STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT**

Mr. MANTON. I thank the gentleman.

Ladies and gentlemen, as is obvious, we are having a hearing today on Pacific salmon. Many people concerned with fisheries management have commented that the main problem with fish is that they do not possess the good sense to obey political boundaries. Today, we meet to discuss this problem in the context of our ongoing negotiations with Canada concerning the Pacific Salmon Treaty.

Signed in 1985, this Treaty addresses the problems associated with salmon which originate in one country but are harvested by another. The Treaty sets the ambitious goals of preserving Pacific salmon to achieve optimum production and dividing the harvest so that each country, the United States and Canada, will fairly share in this valuable resource.

While the Treaty has enjoyed some success, we have failed recently to make any meaningful changes to the Treaty's implementation. Recent attention has focused primarily on the trouble spots of the Treaty process and the failure of the parties to reach agreements that would properly conserve certain stocks of Pacific salmon.

Specifically, I am concerned about the breakdown of negotiations between Canada and the United States earlier this year, and the transit fee which Canada imposed upon vessels traveling through its inside passage in response to this failure to reach a new agreement.

While I am pleased that talks between our two nations have resumed, I still have some concerns about the future of the Treaty and its likelihood of achieving the goals of conserving Pacific salmon stocks in a manner that is equitable to both countries.

The United States and Canada have a long history of cooperating to conserve and manage this and other vital natural resources. However, Canada has recently acted irrationally, in my judgment, and in a self-serving manner, which does a great disservice to our mutually-shared goals and ideals. The fee, and Canada's recent seizure of two U.S. scallop vessels in international waters, only serves to heighten the tension between our two countries. In the meantime, certain Canadian vessels are also apparently fishing for swordfish in direct violation of ICCAT recommendations. I look forward to hearing the opinions of our witnesses on how this cooperative effort on Pacific salmon can continue in light of these recent actions.

Does the gentlewoman from Oregon have an opening statement?

**STATEMENT OF HON. ELIZABETH FURSE, A U.S. REPRESENTATIVE FROM OREGON**

Ms. FURSE. Thank you, Mr. Chairman. I want to express my gratitude for the response of this Committee to the four Northwest Committee members' request for the hearing. Your leadership in this has been critical and I and my constituents are very appreciative.

This is the second hearing this summer to address the critical issues of Pacific salmon, and I cannot emphasize how important the salmon are to my constituents in Oregon's first district, and in fact the entire Northwest. I don't think it is exaggerating to say that these legendary fish are indeed the warp thread of the cultural fabric of the Pacific Northwest.

And in addition, they are a \$1 billion contribution to our economy. But unfortunately, Mr. Chairman, they are also the canary in the coal mine. They are telling us with their decline that there is a drastic decline in the health of Northwest ecosystems. The Oregon-Washington Ocean Fishery was closed this year for the first time in our entire States' history. In-river commercial recreation and ceremonial harvest has also been drastically scaled back. Three Columbia River stocks have been listed under the Endangered Species Act, several more are petitioned.

But a central piece to the salmon puzzle is the Pacific Salmon Treaty, signed by the United States and Canada in 1985. At the heart of that Treaty is its governing conservation principles, the principles to prevent overfishing and provide for optimum salmon production. Despite all the good intentions of the Treaty, implementation is failing. What is more, negotiations to develop a new harvest regime under the Treaty have stalled.

Though it appears to be averted for now, there is continued discussion of a so-called fish war between Canada and the United States I join my Northwest colleagues in calling for this hearing because we find this situation unacceptable. The United States needs to speak with one strong voice in providing leadership on treaty negotiations and avoiding a fish war.

The United States needs to renew its commitment to working with its northern neighbor to rebuild the weak stocks and make the necessary sacrifices to achieve that goal. The survival of many Northwest runs, including the listed Columbia River stocks and the declining coastal coho runs, hang in the balance. Without recovery of these stocks, we will say good-bye forever to our \$1 billion salmon fishery and farewell to a way of life for many fishermen and women and the tribes who have traditionally fished these rivers since time immemorial.

Today's panel of witnesses will hopefully help illuminate the proper pathway to take to achieve progress in the treaty negotiations and to let Congress know if we need to take action to facilitate this resolution. I am eager to hear their testimony and I thank you, Mr. Chairman, for being willing to put on this hearing.

Thank you.

Mr. MANTON. Without objection, the statement of the Honorable Gerry Studds will be submitted and entered in the record.

[The statement of Mr. Studds follows:]

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND CHAIRMAN, SUBCOMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Thanks to the persistence of our West Coast members, this Committee has followed the northwest salmon issue for several years. We have come to feel great empathy for these magnificent fish, as we seem to be constantly swimming upstream and banging our heads into large concrete walls. We have seen this issue grow from a traumatic regional crisis to a full-blown national and—as we shall see today—international disaster.

During the 103rd Congress, we have held numerous hearings on the salmon crisis in the Northwest. Our hearing record speaks to virtually every element of the salmon's life cycle. The experts have told us there is no panacea. We must address issues of hydropower, habitat, hatcheries, and harvest—the 4 Hs—if we are to restore our native Pacific salmon runs. Today's issue looks at the fourth H—harvest.

This hearing on the Pacific Salmon Treaty focuses on the joint management with Canada of many of our endangered salmon stocks. We have a long and fruitful tradition of cooperation with Canada to conserve and enhance these transboundary resources.

For instance, the recovery of Canadian sockeye salmon from the Fraser River is directly attributable to U.S.-Canadian cooperation on habitat restoration and fisheries management reaching as far back as the 1930's. We in the United States recognized that we were beneficiaries of healthy Fraser River stocks and were, therefore, quite willing to assist Canada and to sign the historic Fraser River Salmon Treaty.

Times have changed, but the story-line has not. We now face an even more extensive crash of salmon stocks, requiring even greater cooperation on fisheries management and improvements in river habitat.

This is why our Committee is greatly concerned by reports that the negotiations between the United States and Canada have ended in stalemate, and that our shared salmon resources will have to be managed by separate, unilaterally imposed management regimes. We can do better than this, and we must.

I am hopeful that today's hearing will provide us with an understanding of the Pacific Salmon Commission's views on what needs to be done to resume our cooperation with Canada and to reaffirm our two nations' commitment to addressing issues of utmost concern to both countries.

### The statement of Mr. Fields follows:

#### STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, the negotiations between the United States and Canada on the Pacific Salmon Treaty Annex IV, which governs fisheries issues, have broken down. It is unfortunate that the two sides can not reach an agreement on this important annex.

The United States and Canada have been able to work together to manage salmon harvests for over a hundred years, either through informal agreements or through formal treaties. The Pacific Salmon Treaty signed in 1985 by Canada and the United States, addresses three areas of concern: conservation of specific stocks; the principle of equity between United States and Canadian harvests; and reducing interceptions of those stocks identified as native to one nation and harvested by the other. In addition to the Treaty, there are four annexes. These annexes are the operative part of the fishery management agreements between the two countries because they are modified on a rotating basis. Subsequent to the signing of the Treaty and the one successful renegotiation of the annexes in 1989, Canada and the United States have not been able to agree on any renegotiations. Consequently, none of the four annexes have been renewed.

The Pacific Salmon Commission (PSC) administers the Treaty. The Commission is assisted by three panels that provide information and make recommendations. Each country has four commissioners who decide that country's vote on Treaty issues. The U.S. panel has a non-voting Federal commissioner and three voting commissioners representing Alaska, Oregon, and Washington, and the Pacific Northwest tribes. The voting mechanism is set up in such a way that one commissioner can veto a proposal, and the other commissioners can not override that veto. If there is not consensus on a proposal, it does not get passed on to the PSC. Some claim that this procedure is a hindrance to the negotiation process. Others point out that it protects the rights of all U.S. participants by ensuring that reductions in U.S. fishing will be fairly allocated.

The main issues of contention are the principle of equity and interceptions. Both parties have put money into restoring their stocks (through improved stock management, restoration of habitat, and hatchery enhancement) and want to reap the benefits of these efforts. These efforts are nullified due to interceptions by both sides. The Canadians, believing U.S. interceptions are higher than their own, have proposed an equity position to redistribute the wealth according to the intercepted catch rate of each party. The United States has not agreed to this approach to equity, believing it to be a more complex issue. The United States has been unable

to draft an equity position that Canada can agree with, which Canada has used as an excuse to walk out of negotiations.

The negotiations for 1994 have been put off until 1995 in the hopes of getting an agreement at that time. Both parties have agreed to abide by the principles of the Treaty, conservation and management of intermingling stocks, and to work towards a resolution in 1995.

Mr. Chairman, I hope that today's witnesses will shed some light on how these differences among the U.S. Commission members and between the U.S. and Canadian interests can be worked out so that Annex IV to this important Treaty can be renewed.

Thank you, Mr. Chairman.

Mr. MANTON. Does the gentleman from New Jersey have any statement?

If not, the gentlewoman from Washington.

#### **STATEMENT OF HON. JOLENE UNSOELD, A U.S. REPRESENTATIVE FROM WASHINGTON**

Ms. UNSOELD. Thank you, Mr. Chairman.

Since 1985, the Treaty has been the means for our international management of Northwest salmon. At the time of its signing, Northwesterners were told that the Treaty was carefully structured to protect the salmon and that based on the principles incorporated into the Treaty, it was carefully structured to protect the salmon, and that based on those Treaty's principles of conservation, the two countries would cooperate to protect the stocks from overfishing.

But looking back, reality has changed and shifted away from the Treaty that began with such good intentions. Instead of fulfilling the promise of rebuilding prized chinook and coho, we have many of these stocks facing threatened or endangered status. Instead of fulfilling the promise of security of salmon for ourselves and coming generations, we have unprecedented levels of Federal disaster assistance flowing to our salmon-dependent communities.

More than a year ago, Assistant Secretary of State Elinor Constable notified our U.S. commissioners that we were not meeting the conservation needs of chinook, and thus in jeopardy of not fulfilling our international obligations under the Treaty. Yet, since that time little, if any, progress has been made. Status quo management continues. Our failure to respond under the Treaty to the conservation crises of Pacific salmon is a travesty.

As endless meetings of national and international bureaucracies discuss their fate, our stocks continue to suffer. With time running out, I look forward to this hearing as an opportunity to explore ways to improve the treaty process and its effect on our salmon.

Thank you, Mr. Chairman, for holding the meeting.

Mr. MANTON. The Chair will now call up the panel.

At that point I will turn the Chair over to Ms. Unsoeld and go to the Floor for my statement on the pending maritime matters and try to get back before the hearing is over.

Mr. Gary Matlock, Program Officer, National Oceanic and Atmospheric Administration; our former colleague, the Honorable Edward Derwinski, of Derwinski and Associates, International Consultants; Mr. Charles Meacham, Deputy Commissioner, Alaska Department of Fish and Game; Mr. Gerald I. James, Policy Director of the Lummi Tribe; and Mr. Bob Turner, Washington Department of Fish and Wildlife.

Gentleman, if you would be kind enough to come up to the designated seat at the witness table, we will get started.

Mrs. UNSOELD. [Presiding.] We will take the witnesses in the order in which they are shown on the agenda.

So, Mr. Matlock, that makes you first.

**STATEMENT OF GARY MATLOCK, PROGRAM MANAGEMENT OFFICER, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE**

Dr. MATLOCK. Thank you, Madam Chairwoman.

I am Gary Matlock, the Program Management Officer for the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration. I am pleased to have the opportunity to testify before the Committee on the state of the current U.S.-Canada Pacific salmon negotiations.

The Pacific Salmon Commission (PSC), established in 1985 under the U.S.-Canada Pacific Salmon Treaty, has maintained extensive salmon management programs. However, for the first time since its inception, almost all PSC salmon management regimes expired at the end of 1993, and have not yet been renegotiated. Thus, a brief review of the issues involved may be useful.

The basic principles of the Treaty set forth in Article III call for the United States and Canada to work together to prevent overfishing and provide for optimum production, and to provide for each party to receive benefits equivalent to the production of salmon originating in its waters. The former is referred to as the "conservation principle" and the latter as the "equity principle".

The PSC is unique in that Federal law dictates that decisions can be taken only when there is no dissenting vote by the U.S. Commissioners from Alaska, the Pacific Northwest, and Treaty Indian tribes. The Federal Commissioner has no vote and can therefore only play a conciliatory role.

A very extended effort has been expended to date in negotiations to again achieve long-term management regimes for 1994 and beyond. Unfortunately, the PSC did not reach any agreement on salmon fishing regimes at its annual meeting in Vancouver, British Columbia, in February of this year. The current task is complicated by the number of issues requiring resolution simultaneously, Canadian insistence that an understanding on "equity issues" be a prerequisite for any agreement on future fisheries management regimes, and markedly different salmon stock conditions in various areas.

There is also a Canadian perception that the United States receives substantially greater benefits from salmon interceptions than Canada does under the Treaty. The two sides have held a number of meetings on the equity issue. They have exchanged papers outlining views as to the framework within which the equity issues should be addressed. However, little common ground for agreement has emerged. The Canadian approach envisions a narrow focus on calculating interceptions and developing a simplistic "yardstick" using commercial fish prices to value benefits; whereas, the United States takes the view that addressing benefits must encompass a much broader range of societal impacts, including recreational and other uses of salmon. In addition, the United States

believes that any obligation by either party to redress any equity imbalance should be mitigated by circumstances related to conservation, natural phenomena, or certain unilateral actions of the other party.

Pacific Northwest salmon conservation issues also present exceptional challenges. On April 8 of this year, the Pacific Fishery Management Council, in action to conserve U.S. chinook and coho salmon stocks, recommended severe restrictions on chinook and coho fisheries off Washington, Oregon and California. The chinook and coho stocks in question are particularly affected by Canadian fisheries off Vancouver Island in southern British Columbia—Canadian fisheries which were the subject of catch limits under expired PSC fishing regimes. The United States has emphasized the need for Canada to reduce its harvest rate on these depleted stocks.

In view of the extended impasse in PSC negotiations, senior government officials of both countries recently undertook extraordinary efforts to explore approaches that would address both countries' conservation and equity needs. This initiative focused on ways of facilitating some resolution of PSC issues for the 1994 fishing season. Consultations were maintained with the U.S. PSC Commissioners and key State and tribal officials to advance this end. Unfortunately, comprehensive solutions were not achieved.

For 1994, therefore, in the absence of an interim agreement, the two countries have acknowledged their treaty obligations, particularly the obligation set forth in Chapter 7 of Annex IV that "unless otherwise agreed, neither party shall initiate new intercepting fisheries, nor conduct or redirect fisheries in a manner that intentionally increases interceptions". In addition, both countries are committed to act responsibly and observe conservation principles for 1994 fisheries.

The United States and Canada are still far apart on many key issues. Nevertheless, the Administration is committed to a serious continuing effort to facilitating a resolution to these issues. There are no easy solutions, however, as illustrated by the fact that the Pacific Salmon Treaty took 14 years to negotiate. The U.S. goal since the start of the latest round of negotiations has been the conclusion of multi-year fishing regimes which respect both conservation and equity. The basis has been laid to resume comprehensive negotiations in September to achieve this goal. Between now and then, we will be working closely with the U.S. Commissioners and State and tribal officials to develop the best approach to these negotiations.

Thank you again for the opportunity to be here and I would be glad to answer any questions at the appropriate time.

[The statement of Dr. Matlock can be found at the end of the hearing.]

Mrs. UNSOELD. I believe you are next, Mr. Derwinski.

#### **STATEMENT OF HON. EDWARD DERWINSKI, DERWINSKI & ASSOCIATES INTERNATIONAL CONSULTANTS**

Mr. DERWINSKI. Thank you, Madam Chairman.

I am Edward Derwinski. I am here because I had an assignment from Secretary of State George Schultz 10 years ago. I was the overseeing negotiator of the 1985 Treaty. And as such, I represent

a little bit of historic background and a little bit of institutional memory of where we were then and where we are now. I have a statement which is submitted for the record. I would ask that my complete statement be entered in the record.

Mrs. UNSOELD. Without objection for all the witnesses.

Mr. DERWINSKI. And I will just cover very briefly, and then make some additional comment.

I would like to point out something which I am sure everyone can understand, and that is that achieving the Treaty and the subsequent legislation was an extremely difficult challenge, by the very delicate nature of—I don't want to say adversaries—the various points of view that existed. But the United States and Canada started with a fundamental mutuality of interest.

Obviously, though, their views, official views on conservation, and management, were impacted by regional considerations. And that is very understandable. And in the 15-year period preceding the approval of this Treaty, the fishermen on both sides of the border suffered as stocks declined, allocations were distorted, and enhancement and research were limited. So it was in everybody's interest that a treaty finally be reached.

The fundamental problem which couldn't be addressed at that time was that the United States and Canada have never agreed on an interpretation of equity, nor on the system of accounting for interceptions. This is reflected in the tortured language of the Treaty and the accompanying memorandum of understanding.

Had the Canadian position, which they repeatedly have stated and have been very persistent and consistent in their statements, been reflected in the language of the Treaty and the memorandum, we would never have accepted them. The Senate would never have ratified the Treaty. And we understood that and the economic cost to the fisheries-dependent communities in the State of Washington, and the State of Alaska would have been far too great.

That was a factor in both the language that we had to struggle with as well as the decisions that were made. Now, in the 10 years that have past, the Treaty served a constructive purpose, and there was a rational relationship in those years. I understand that the United States and Canada have attempted to renegotiate the salmon management regimes, but obviously have not been successful.

I also understand, and this is almost history repeating itself, that the Prime Minister of Canada and President Clinton in a phone conversation in April of this year discussed, among other things, the need to solve the problems posed in the Pacific salmon issues. The reason it sounds so familiar is that our effort which we undertook 10 years ago started after a phone conversation between then Prime Minister Mulroney and President Reagan.

So here we are 10 years later at the level of the President and Prime Minister, hoping to stimulate what would be a successful new treaty. The issue, as I see it—here, again, I am looking at this from a standpoint of history and reality more than with a political hat. I am not a fishing expert, but I am convinced that the only way that we in the United States could get ourselves positioned to effectively negotiate with our Canadian friends and neighbors is if we have a—what I call a domestic consensus. That means between the fishing interests of Oregon, Washington and Alaska.

Now, we achieved that 10 years ago. That was one of the reasons we were able to get this Treaty. I should mention at this time that my role was strictly that of a political hand-holder. I had a Canadian counterpart who was assigned to this task by the Prime Minister, Mr. Mitchell Sharp, who was a senior statesman in Canadian circles, a former Minister of External Affairs of Canada. And by the way, I should add, he was a Liberal and he was designated by the Tory Government for this assignment because they, on their side, wanted to be above partisan politics. We managed on our side to be above any partisanship. There is enough trouble trying to get Alaskans and State of Washington fishermen to chat amiably after a few beers at the bar. We kept politics out of this completely.

The technical work and the real expertise that went into the allocation of the salmon resources were really the result of three very, very dedicated officials, Mr. Ted Kronmiller, who at one time had been, I understand, a staffer of this Committee and had extensive assignments at the State Department; Dave Colson, who is still at the State Department and has the institutional memory, and a young lady I must mention, Joy Yamagita, a lawyer at the time in the Department of State. They were the three who wrestled with all the details, while it was my assignment to see that we met with every group of fishermen in the three States, Oregon, Washington, and Alaska.

In fact, we even met with Idaho interests. And we finally managed to get a U.S. consensus. And whenever the Canadians would make a demand, no matter how small it was, we would go back and clear with the U.S. participants before we went forward.

We did everything up front, everything direct, and as a result, in the end, we were able to get this Treaty. All of the fishermen involved, of all types, were able to convey to their Senate Members their approval. We had an easy time at the time we presented the Treaty for ratification.

That is the history, Madam Chairman.

[The statement of Mr. Derwinski can be found at the end of the hearing.]

Mrs. UNSOELD. Thank you. I believe I probably have some more questions for you later.

Mr. Meacham.

#### **STATEMENT OF CHARLES P. MEACHAM, DEPUTY COMMISSIONER, ALASKA DEPARTMENT OF FISH AND GAME**

Mr. MEACHAM. Thank you, Madam Chairman.

My name is Chuck Meacham. I am Alaska's Commissioner for the Pacific Salmon Commission and Deputy Commissioner for the Alaska Department of Fish and Game. I have been a biologist with the Department for over 20 years now.

Previous to that, I commercial fished for four years, worked with the fish processing industry for three years, was a seafood inspector with the military for three years and a lifelong sports fisherman, as well. I do hold a life membership with the American Fishery Society and am a member of the American Institute of Fisheries Research Biologists.

I am here today to testify on the Pacific Salmon Treaty and appreciate the opportunity you provided me to do so.

Over the past decade, the Pacific Salmon Treaty has produced significant accomplishments in the conservation and wise use of our Pacific salmon resources. However, progress toward treaty goals has not always been as rapid as we would have liked, and pre-treaty expectations have not uniformly been met throughout the different treaty areas. The treaty principles of conservation, optimum production and fair sharing, are also fundamental to Alaska's fisheries management program.

In 1959, when Alaska became a State and assumed responsibility for managing its fisheries, salmon runs had been drastically declining for over two decades and were in serious, serious trouble due to Federal mismanagement and associated overfishing. With statehood, local fisheries managers were encouraged to make the tough decisions to forego immediate harvest and dedicate fish to spawning escapements. And protection of critical salmon habitat was also identified as the foundation for healthy fish production in Alaska then and continues to be the case today as well.

Alaska's participation in the Pacific Salmon Treaty process has been guided by a fundamental principle of conservation and wise resource management. These principles are common to both the Treaty and Alaska's own salmon management program.

The northern treaty area includes southeast Alaska and northern British Columbia. In southeast Alaska alone there are approximately 5,370 streams and lakes producing anadromous salmonids. In truth, really few conservation problems exist in the northern treaty area. That is the northern portion of the Canadian treaty area, as well as in Alaska.

When conservation problems do develop in Alaska, immediate conservation closures are routinely implemented actually during the season. We have emergency order authority delegated to biologists located out in the areas where the fisheries take place.

In contrast to the condition of salmon stocks in Alaska and northern British Columbia, Pacific Northwest stocks are experiencing grave difficulties. The American Fishery Society, a professional society of fishery scientists and managers, published a report in 1991 that documented 106 Pacific Northwest salmon stocks as extinct and 214 stocks at risk of extinction or of special concern.

The demise of these stocks really represents a tragic loss of cultural as well as economic value to both present and to future generations. Since this report, the National Marine Fisheries Service has listed a number of these stocks as threatened or endangered.

Furthermore, the National Marine Fisheries received petitions to list hundreds of additional stocks from the Pacific Northwest. Declines in Washington and Oregon coho and chinook salmon stocks, at this point caused in part by extended series of drought years, unfavorable El Nino ocean conditions, and long-term habitat degradation, really have created many new challenges for the commission. Reduced harvest of these stocks by Canadian fishermen off the West coast of Vancouver Island has upset the equity balance for Washington State catches of Fraser River sockeye stocks which are currently at extremely high, very healthy levels.

The challenge of the next decade of the Treaty will be to use the experience gained during the first decade to build on the progress already made. Inabilities to find quick solutions to very complex

problems must not be allowed to prevent progress on cooperative salmon conservation and management programs. Solutions are possible. They are known.

I would offer the following as three possibilities. First, I think we need to implement a habitat restoration and associated salmonid enhancement initiative within the Pacific Salmon Treaty area. Second, we need more effective and efficient Pacific Salmon Commission processes, separating north and south negotiations with Canada to the extent possible. And third, I think we need to take a prudent businessman approach to solving the equity problem. This will clearly be in the best interest of the Pacific salmon resource and the fishing communities which share these resources.

Thank you very much.

[The statement of Mr. Meacham can be found at the end of the hearing.]

Mrs. UNSOELD. Thank you. Mr. James.

#### **STATEMENT OF GERALD I. JAMES, POLICY DIRECTOR, LUMMI TRIBE**

Mr. JAMES. Good afternoon, Madam Chairman. My name is Gerald James. I am a member of the Lummi Indian Nation and one of three voting commissioners on the U.S. side of the Pacific Salmon Commission. In that capacity, I represent 24 sovereign treaty Indian tribes located in Washington, Oregon, and Idaho. On their behalf, let me express our appreciation to you for this opportunity to address the Committee.

The treaty tribes in the Pacific Northwest have a special role in the fishery and in fisheries management. This role stems from our treaties with the U.S. Government.

In these treaties, which repeatedly have been interpreted and upheld by the highest courts in the land, the tribes granted vast areas of land in the Pacific Northwest to the United States, but reserved forever their rights to fish in their usual and accustomed areas. For those of you not lucky enough to be from the Pacific Northwest or familiar with fisheries management in that part of the world, let me sum up our role by saying that you cannot talk about fisheries policy in the Northwest unless you are also talking with the tribes. As governments and co-managers of the resource, we must be involved in all facets of the fisheries management in the Pacific Northwest.

Before I address the specific questions you presented to me in your invitation to this hearing, let me first point out that there are many reasons the salmon are in so much trouble today. As many of you are learning, a lot needs to be done to fix the problems. Not surprisingly, the fixes must be related to the causes.

In particular, we have serious habitat problems caused by hydroelectric development, urban growth, forestry practices, runoff, pollution, and water withdrawals, just to name a few. It is unrealistic and unfair to try to address the symptom of these problems, the decline of the salmon, with harvest management alone. That approach will fail.

The tribes stand ready to contribute to solving these problems, but we will not allow our fisheries and our cultures to be sacrificed as a substitute to addressing the real causes of the salmon di-

lemma, or addressing those problems to the real beneficiaries and the causes of those declines.

A comprehensive, long-term approach is absolutely essential to get us out of this mess we are in. Together with our co-managers from the State resources agencies, we are working on just such an approach. Specifically, we are developing a comprehensive framework, which we call for the sake of the salmon, that we will be discussing with many of you and other public officials here and in the region over the next several days and weeks, to solicit advice and support.

While I do not want in any way to diminish the importance of today's topic, which is improving the implementation of the Pacific Salmon Treaty, I do want to impress upon you that this is but one piece of a much larger effort to save the salmon.

Let me now get to the specific issue at hand. The need for the Pacific Salmon Treaty stems from one simple fact; salmon do not respect boundaries. That was true in 1985 when the Treaty was signed, and it is true today. For this simple reason, management of the salmon requires interjurisdictional cooperation.

We cannot hope to manage these stocks for optimum production if the various parties that affect them are working at cross-purposes. We can debate the specifics of how that cooperation should occur, but there can be no question about the necessity of the Treaty. In summary, the answer to your first question is no, unilateral fisheries management of salmon will not work, at least not for long.

In 1985, the tribes' primary goal for this Treaty, which exists largely as a result of the focused, sustained efforts of the tribes and their regional co-managers, was to rebuild depressed stocks and sustain production at optimum levels to support the fisheries upon which our way of life depends. That still is our primary goal.

Unfortunately, progress in this regard has been much slower than we had envisioned. In some cases, there has been no progress at all; and in a few cases, they actually have gotten worse. This has been the biggest disappointment of all.

Another goal of the tribes was to further the process of institutionalizing our involvement in fisheries management and fisheries policy. Our historical experience with having others make decisions on our behalf has reinforced the necessity for looking out for ourselves. This means direct, substantive tribal involvement is essential, and we will continue to insist upon it.

In the Pacific Salmon Commission forum, we have been reasonably successful in accomplishing this goal. We are represented and actively participate at all levels of the commission structure, both policy and technical. It is because of our historical experiences of being shut out of the decisionmaking that we will be very cautious about relinquishing any control over this process.

Yet another goal was to improve the science of fisheries management, and how it is utilized in resource decisionmaking. Our results, to date, have been mixed. While we have made great strides in the technical area, which is one of the often overlooked positive results of this Treaty, we do not do a very good job of using this improved information to make decisions. This is a failure at the top of the organization, a failure demonstrated most clearly by the decision gridlock at the policy level.

This leads me to your question about obstacles to achieving a unified position. We fail to reach a unified position because we have conflicting interests and disagree on the specific meaning of some rather fundamental elements of the Treaty. The most serious substantive element is the principle of equity, the international allocation standard of the Treaty. While none of us on the United States side buys into the Canadian view, we have been unable to move forward on this issue in the United States section because of our inability to resolve our conflicting internal views.

That we would disagree on important issues in the United States section was anticipated in 1985. What was unanticipated was the gridlock that would result from our lack of mechanism to resolve our disagreements. We did not foresee an enormous capacity to sustain debates over these issues, debates that lead to no resolution. In short, the requirement for total consensus among the three voting U.S. commissioners has turned the requirement for total consensus into a recipe for avoiding decisions, rather than a mechanism for forcing consensus.

What I find particularly ironic about this situation is that we, the tribes and the States, created this system quite intentionally. Each of us was so concerned about being outvoted by the others that we wrote the consensus standard into the Treaty. Because of our respective experiences with the Federal Government, we insisted upon retaining local control over the decisions.

That is why the Federal Commissioner was given no vote. We knew that the consensus requirement would be a tough standard, and that it would take a great deal of effort and a willingness to compromise. What we failed to adequately foresee was the extent of the gridlock that would result. Quite frankly, some of us did not foresee how much the gridlock would serve to preserve the status quo, a status quo which increasingly is more harmful to some of us than to others.

As I mentioned earlier, the tribes have good reason to be very skeptical about surrendering any of their control over decisions that so greatly affect them. However, we also recognize that there is no value in protecting our standing in a salmon management process which stands by and allows salmon to disappear. It saddens us deeply to watch this precious and unique resource which our people have nurtured and honored for thousands of years, disappear in a few short decades. Something has to be done, now.

The good news is the Treaty itself is basically sound. Even the Pacific Salmon Treaty Act, our U.S. implementing legislation, is basically sound. That part isn't broke, so let's not try to fix it.

There is one small exception. There needs to be a way to force decisions within the U.S. section. Toward that end, I am providing you with a proposed amendment to the Pacific Salmon Treaty Act of 1985. This proposal is quite simple and preserves the opportunity of the tribes and the States to reach consensus.

However, in the event they fail to reach a decision, the Federal commissioner would have to propose a position to the three voting U.S. commissioners. This Federal proposal, which would have to respect both the international and domestic obligations of the United States, could be modified by the State and tribal commissioners only to the extent the three of them can reach agreement to do so.

This amendment would result in something happening that many of us thought would occur with the existing system. The Federal commissioner would take on an influential role in facilitating decisions. This is the most important role the Federal Government can play in the United States section's deliberative processes, and stands in sharp contrast to the wholly unacceptable alternative to allowing the Federal Government to unilaterally negotiate on our behalf.

We believe this simple proposal is all that must be done to end the decision gridlock. However, I want to reiterate an earlier point. Restoring the salmon resource will require much more than improving the function of the Pacific Salmon Treaty. This amendment is, however, a very important start. Thank you.

[The statement of Mr. James can be found at the end of the hearing.]

Mrs. UNSOELD. Thank you. Mr. Turner.

**STATEMENT OF BOB TURNER, DIRECTOR, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, ACCCOMPANIED BY ROLAND ROUSSEAU, OREGON ALTERNATE COMMISSIONER, PACIFIC SALMON COMMISSION**

Mr. TURNER. Thank you, Madam Chairwoman. I am Bob Turner, Director of the Washington Department of Fish and Wildlife, and serve on the Pacific Salmon Commission. Also here today is Rollie Rousseau, who is alternate commissioner representing the State of Oregon, who I am sure will welcome any questions the Committee may have. I have a comprehensive statement that I would like to submit for the record with your permission and paraphrase it in testimony.

Mrs. UNSOELD. Without objection.

Mr. TURNER. Thank you. Most of that testimony that has been submitted is a reflection of the expectations that Ambassador Derwinski spoke to that existed in 1985, and a description of the current state of affairs and some of the attempts that were made in the ensuing nine years to close the gap or at least minimize the distance that was being created between reality and expectations. Top priority for the State of Washington throughout those years has been the conservation of chinook and coho salmon, particularly with regard to the harvest of those stocks off the west coast of Vancouver Island in Canada.

Conservation of those stocks are Federal policy, just as this Treaty itself is Federal policy. That Federal policy is reflected in the listing of Snake River chinook stocks under the Endangered Species Act, and also comprehensive efforts to rebuild the coho stocks coast-wide, together with petitions pending on some of those stocks.

One point to be made to the Committee is that we are not talking about regional policy solely. We have Federal policy at stake in the conservation of these resources. The problem, as G.I. James mentioned, is between the Federal policy as stated in the Treaty and the Federal policy as being implemented. There are barriers in the implementing legislation that do not allow us to make a decision in a timely fashion. And that is the thrust and the conclusion of my statement which was submitted to you.

We have in the implementing legislation an experiment in public policy. We have Federal policy articulated in the Treaty and we have the implementation of Federal policy through the required consensus of regional representatives.

I think it is timely for this Committee today to look at whether or not that experiment in public policy is an effective tool to implement Federal policy. And of course we agree with G.I. James and his testimony, that it is not working. It does not effectively implement Federal policy, and it is time to review it and call for a change.

We have submitted in our testimony the same language that G.I. James mentioned in his testimony that would suggest a change.

The issues that you have before you dealing with chinook and coho conservation on the West Coast are not new. They have been raised repeatedly and, particularly since 1992, have become the primary focus of our concern. Because of those overriding conservation concerns, we have the concurrent issues presented by fishing closures that face fishers up and down the coast, including Washington State's commercial fishers.

Congressman Swift represents many of those commercial fishers, and has legitimate concerns about the impacts that those conservation decisions may have on his constituencies. But the bottom line is that because of the way Canada manages its fisheries, because Canada intercepts only Washington and Oregon stocks to a great degree, and not many Alaska stocks, no matter whether Canada's concerns be with Alaska fisheries or whether they be with Washington State and tribal interceptions of Fraser River fish, wherever Canada's concerns lie, Washington pays the price. We pay the price through increased interceptions on the west coast of Vancouver Island.

So Washington is at a geographic disadvantage in this equation. We acknowledge it up front. The table is not level from a negotiating perspective, and we must deal from that point of disadvantage.

Unfortunately, because the implementing legislation vests us all in the status quo, we are unable to make the kinds of improvements that we expected in 1985. Equity has become the primary issue in these negotiations today. Canada is very frustrated and articulates that frustration with our inability to move on equity.

Secretary of State Schultz recognized at the time he submitted the Treaty and its implementing legislation to the Senate that equity was going to be difficult. With reference to equity, and I am quoting his letter of transmittal, he said, "This will be no simple task. We anticipate that this calculation of equity will consider, among other factors, numbers of fish that are intercepted, their size and growth potential, and their value.

"To the extent that the Commission is able to ascertain levels of interception by each party are not equivalent, it would expect within the Commission the parties would develop a phased program to adjust and compensate for inequity."

We are 9 years down the road. We have not made one inch of progress on the very issue that was identified up front to be an issue of concern.

Chinook rebuilding was also a major focus of the Treaty in 1985, and a similar evolution of concern and status quo could be articu-

lated for chinook, as well. And that is reflected in a lot of the documents but need not be brought up at this point.

The State of Washington supported the decision by the Federal Government a year ago to take over equity discussions on a government-to-government basis because we were not making progress. Unfortunately, even though the Federal Government took that issue over, little progress has been made to date. In part, this has been because of the same kind of policy direction that was given in the implementing legislation.

Gary Matlock mentioned that there is a degree of frustration at the Federal level that the implementing legislation gives them little clear authority to act unilaterally and does not put firm ice under their feet to deal on a government-to-government basis. But if I can quote a letter from Governor Roberts of Oregon, Governor Lowry of Washington, Bill Frank representing Northwest Indian Fisheries Commission, and Gene Green representing the Columbia River tribes:

"We support the President's call to move forward on strategies to rebuild salmon stocks to optimum production through better harvest management and coast-wide habitat protection and restoration. The Treaty was intended to provide the vehicle for this progress. However, it has been clear for several years that progress on the equity issue is critical to success of the Treaty. Absent such progress, Canada simply will not cooperate fully in rebuilding depressed Pacific salmon stocks. We disagree strongly with many aspects of Canada's position on equity. Nevertheless, we are not convinced that the State Department has done all it can to explore reasonable options with Canada that could break the impasse. Our representatives to the U.S. section of the Pacific Salmon Commission remain prepared to pursue such options."

This letter, written early this year, was in anticipation of the kinds of conflicts that led to the last six weeks of intense government-to-government negotiations over the 1994 fishing regime.

The long and the short of it is that we need and we invite this Committee to take a look at the implementing legislation, what I call an "experiment in implementation of Federal public policy," and see if it isn't time for a change, to put in place a forcing mechanism for decisions that can bring us all, including the Commission, to meet the expectations that were raised in 1985.

Thank you.

[The statement of Mr. Turner can be found at the end of the hearing.]

Mrs. UNSOELD. Thank you.

The Coast Guard was invited to respond to any questions, and perhaps a representative of them would come up and sit in the other Chair to be available for questioning.

I might break a little bit with tradition and call on the gentleman from Alaska whose seniority outnumbers ours, since he was not here to make an opening statement, and besides, I would rather invite him than let him go.

So I will yield to the gentleman.

Mr. YOUNG. Madam Chairman, you are a smooth one.

Thank you, Madam Chairman.

I will at this time submit for the record my written statement, if there is no objection.

Mrs. UNSOELD. Without objection.

[The statement of Mr. Young follows:]

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND  
RANKING MINORITY MEMBER, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. Chairman, the Pacific Salmon Treaty is as unique as the resource it was designed to protect. It is the only international treaty which combines conservation and management with the principle of equity. It took 14 years for the parties negotiating the original treaty to agree on the final language which was ratified by the United States in 1985.

The time it took to reach the final agreement shows how contentious this Treaty is and how important salmon issues are to the region. The intermingling salmon stocks under this Treaty's jurisdiction are the lifeblood of many fishermen in the North Pacific. The conservation and management of these stocks are key to the survival of these fisheries and the livelihoods of the fishermen who depend on them.

Alaska has had its own conservation and management problems with respect to salmon stocks. In the 1960's and early 1970's, the salmon stocks of Alaska were as decimated as the Northwest stocks are today. The people involved in these fisheries went through several years of hardship to rebuild the stocks. Fishery closures are not easy for the fishermen or the managers. But, sacrifices have to be made when a resource as unique as the salmon is at stake.

The point I am making is this, in managing natural resources, we as managers are bound to make mistakes. What we need to do is learn from them and also determine the cause of our mismanagement. In the case of the declining Northwest salmon stocks, there are many factors compounding the problem: hydroelectric dams, logging, farming, development, and fishing are all putting pressure on the salmon habitat. It was inevitable that the stocks would decline.

The State of Alaska is willing to work with the other parties to the Treaty, but I will not allow Alaska to bear the burden of everyone else's conservation problems. I particularly do not like the tactics the Canadians have been using and their attempt to blackmail the United States to give in to their demands on resolving the equity issue.

Canada's idea that conservation of the stocks relies on a resolution of equity is WRONG. For them to focus their fishing on weak U.S. stocks is despicable and in violation of the first stated principle of the Treaty, which is to conduct fisheries in such a way as to prevent overfishing and provide for optimum production.

In my opinion, The Canadians have a short memory on what conservation measures we have taken to protect their stocks. This Treaty was designed to work on the principle of cooperation, not coercion, and I do hope the Administration remembers that.

I find it disconcerting that the officials from the Administration who have been privy to the recent negotiations are not present today. I do hope we will get answers to questions concerning what types of concessions were offered to the Canadians, and what role the Administration will play in future negotiations.

I am, however, pleased to see the Coast Guard here. I am interested in how the Coast Guard is enforcing U.S. law in Dixon Entrance. I would like to get some clarification on U.S. policy and enforcement in relation to this area. I am also interested in the Commissioners' views on how they think a resolution to this Treaty gridlock can be reached.

Mr. Chairman, this is a difficult issue and I do hope this hearing will be a productive one. I believe we should all strive to come to an agreement that we are all comfortable with, rather than one that satisfies only a select few.

Thank you, Mr. Chairman.

Mr. YOUNG. Before I go on, Mr. Turner, one question. I read your testimony. The only question I would like to ask you, and I heard it from Mr. James, a Federal official making things happen. How do you propose that occurring when you have another Nation that is involved?

Mr. TURNER. You have to be more specific about your question, Congressman.

Mr. YOUNG. Well, if I heard you both right, you are asking, when there is a deadlock between Washington, Oregon, Alaska and Canada, you want someone that can get off that deadlock being a Federal official, but my understanding, the Federal official could only apply pressure to Washington, Oregon and Alaska, it doesn't have anything to do with Canada.

Mr. TURNER. If I could paraphrase the proposal; it would determine, first of all, a date by which a position had to be established by the United States, among the U.S. section, to go forth to Canada. That would be up front.

The commissioners would continue to negotiate as we do now, seeking consensus among ourselves on what position the United States should take. As we approach the date certain and if there were not concurrence among the commissioners, the Federal Government would put the position on the wall for the U.S. Section to see. The U.S. Commissioners would look at that, and then would sit down and see, in light of the position that has been proposed by the Federal Government, can we again reach agreement, and if they can, that goes forward.

If the U.S. Commissioners cannot reach agreement, then the position that the Federal Government placed on the wall becomes a United States position.

Mr. YOUNG. I have some serious reservations with that, I want you to know that right off the bat, because you are dealing with Canada, which is a major player, and they don't have to listen to anything we do, regardless of what the Commission does.

Mr. TURNER. It would be our negotiating position.

Mr. YOUNG. It would be a negotiating position, but again—well, we will talk about that later. I am not terribly excited about it.

Mr. Meacham, regarding the equity issue which everybody refers to, what kind of approaches would you use to resolve this problem? We keep hearing equity, that is the big battle between Canada and the United States—how would you solve it?

Mr. MEACHAM. Well, I don't know that I could solve it. But the way I would try and solve it is what I referred to as a prudent businessman approach. I would start out by saying that the Canadian position on equity is that every fish that is produced from an egg in a Canadian stream or a Canadian hatchery is 100 percent Canadian owned, wherever it may roam (or trespass).

What we face up North, of course, is these fish going across our border the size of a minnow and growing into full-size salmon that we all know and enjoy today. So I viewed these as shared fish. They are jointly produced, shared fish. Not owned by one country or the other.

I would think as prudent businessmen, fishermen businessmen in particular, we could try and put together some positive win/win solutions such as we did in our transboundary river fisheries in Alaska. There the Canadians take eggs from salmon located up in Canadian headwaters of the transboundary rivers. We transport those eggs and put them into a hatchery in Alaska, hatch them, and then put them back in rearing lakes. When they return as adult salmon, they are then shared by fishermen of both countries. So both countries benefit.

Another perspective is that some portion of the value of those fish spawned in Canada that are caught in Alaska (some portion of the value, since these are jointly owned, shared fish) could be put into a jointly administered restoration and enhancement fund, to benefit the resource and benefit the fishermen of both countries. That is what I mean when I talk about prudent businessman approach to solving "equity".

Mr. YOUNG. I heard Mr. Turner and Mr. James go south, and Ed, welcome aboard, by the way. As an ex-member, glad to see you here.

Let's talk about the equity solution. In Canada's terms of equity, there is no way that I think any of the commissioners, if I read the letter from Governor Lowry, can accept the equity being proposed by Canada. I know we can't in Alaska.

But do you see this Commission, this group before myself today, if Canada insists on their equity position, ever solving this problem?

Mr. TURNER. If I may.

Mr. YOUNG. Sure.

Mr. TURNER. I don't mean to recast your question, but from my perspective, the issue here is not who is right and who is wrong.

Mr. YOUNG. It is fish.

Mr. TURNER. It is not whether Alaska's view of equity is correct or incorrect, nor is the issue about whether my view of equity is correct or incorrect, or for that matter, Canada's. The issue is one of dispute resolution. We have no means in place to resolve the differences between a variety of views about any particular issue, and therefore, the status quo prevails. What we are suggesting is a forcing mechanism that requires dispute resolution to occur.

Mr. YOUNG. Let me get my time back here.

How are you going to force Canada into whatever we do, into that position? I mean, I just can't see that happening.

By the way, which reminds me; do you think this could be worked out between the West Coast-British Columbia primarily, Alaska, and Washington and Oregon, or do you think there may be a little interference from Ottawa and DC?

Mr. TURNER. I have no question that there is interference from Ottawa.

Mr. YOUNG. Madam Chairman, we are looking for a solution here, and again, it goes back to Canada. I don't think Canada will buy into a Federal Government quote, saying, "you guys can't reach a decision, so this is what it is going to be."

Now, you can negotiate that position. But what I am worried about, if I am a Federal person, you haven't been able to reach this decision, and you are at a stalemate; I come down as a Federal person and say this is what it is and you take this position and negotiate with Canada. Canada refuses that position.

You still haven't reached a solution, the United States comes back again and you end up being nonfunctioning. You end up being zero, because Canada knows full good and well the answer is, Washington, DC, not yourselves, not the State of Alaska, not the State of Washington, not the State of Oregon, if you follow what I am trying to say.

Mr. TURNER. I do follow what you are trying to say. And not only do I disagree with it, I could turn that back around and suggest to you that is exactly what happens today, because you have no position that is agreed to by any commissioner.

Practical reality is that in today's world, we rarely get into negotiations with Canada because we don't have any U.S. position from which to negotiate. The proposal that we have put forward is designed to establish that position.

Mr. YOUNG. But is it established from somebody from Washington, DC As soon as Canada finds that out, they are going to ignore you totally. They are going to go back to Washington, DC.

If you want to do that, that is fine. But I don't want to do that.

Mr. TURNER. Our proposal gives us, the three commissioners, every opportunity to formulate our own position before the United States steps in. It does not remove the opportunity that exists today for the three of us standing here to reach a consensus position.

Mr. YOUNG. I understand that. Excuse me, Madam Chairman.

Mrs. UNSOELD. You may have to wait for your second round.

Mr. YOUNG. I will finish it up.

But if I am a negotiator and I am negotiating with the Chairman here and I find out that my good friend from California has priority over her because we can't reach a decision, OK, we can't reach a decision, that person there makes the position that is taken by the Federal Government.

The Canadian Government knows that and they are going to negotiate in good faith with us. They have no desire to do so. If they had a desire to do it, we wouldn't be in the problem we are today.

I am just saying, we can't make Canada do anything, really, in reality, when it comes to this.

Mr. TURNER. How does Canada know where our position came from in your scenario?

Mr. YOUNG. In your position, you said—

Mr. TURNER. Why do they know anything that I have just described?

Mr. YOUNG. If you can't make a decision, you have asked me to make a decision at the Federal level.

Mr. TURNER. Today, Canada doesn't know how we come to an agreement on a position, nor would they necessarily afterwards, nor do we know how Canada arrives at its position.

Mr. YOUNG. By the way, Canada has a great embassy here and they know most everything that is going on. They are in the room right now.

Mrs. UNSOELD. Thank you.

Dr. Matlock, your testimony points out another aspect of this same question. And under the implementing legislation, you described your role as conciliatory. How do you respond to what Mr. Turner and Mr. James were suggesting as a way out on this? And are you aware of any other instance where the Federal Government has sort of delegated all of its responsibilities to regional interests?

Dr. MATLOCK. The second question is easier to answer, so I will try it first and then do the first one.

Mrs. UNSOELD. Fine.

Dr. MATLOCK. The only one that I am aware of is the Klamath Fishery Management Council. It is not an international setting, it is purely domestic. But there is a council that has been created by Federal law that has a consensus requirement in order to reach decisions on allocation of salmon coming from the Klamath River. I don't know of any others beyond that one.

Mrs. UNSOELD. Doesn't the Federal Government have to approve the final decision before it goes into effect in that instance?

Dr. MATLOCK. No, ma'am, I don't believe so. The Klamath Council makes a recommendation to the Pacific Fishery Management Council. The Federal Government then approves or disapproves or modifies the recommendations coming from the Pacific Council.

Mrs. UNSOELD. So the Federal Government has to approve it before it is final?

Dr. MATLOCK. Yes, ma'am.

Mrs. UNSOELD. OK.

Dr. MATLOCK. OK. I have not seen, in response to the first part of your question, the proposed language that both Mr. Turner and Mr. James spoke of, so I don't have a response relative to the particulars of that, at this point.

Mrs. UNSOELD. If you have the statement by Mr. James, it is the last page.

Dr. MATLOCK. I am sorry, I don't have that either.

Mrs. UNSOELD. Perhaps somebody on the staff could at least get it into his hands.

There we go.

We will come back to you on that question then, because I would like to get your answer on that, so either this round or the next one, I will ask you about it.

Dr. MATLOCK. All right.

Mrs. UNSOELD. How does this conciliatory role, as you described it, allow you to fulfill your obligation as stewards of the salmon resources?

Dr. MATLOCK. Probably in the case of any situation where you are assisting in negotiations or the development of a position, the ability to carry out a mission is dependent upon how well you are able to conduct that activity of negotiating or getting people to come to agreement. It also depends upon the individuals involved and whether or not they are interested in and willing to, and have the ability to reach agreement among themselves. So it is dependent upon both our abilities, as well as the people who are making the decisions.

It has, as I think some of the testimony indicated in the past, resulted in there being agreements, or at least some agreements reached. So we have had some success. However, the success has not been complete nor total. So obviously, the abilities of both of the parties involved have not been complete. We have, though, been able to accomplish some things. The current situation in 1994, we have used the ability to facilitate in the interactions between Canada and the United States directly in the past few months, and are continuing that directly with the Pacific Salmon Commission, to try to do what we can from our role under Federal law to see if we can't get people to reach some agreement, people who actually are involved in making the decisions.

It is not without its trials and tribulations, but there is the potential for success, which we have had some and are trying our best to have more.

Mrs. UNSOELD. But that facilitating role in the last two years has come up with an egg; correct?

Dr. MATLOCK. There has not been a long-term strategy reached during the last two years.

Mrs. UNSOELD. One of the issues associated with the Treaty and the ongoing negotiation is the so-called "all-citizen suit." Bob or Gary or someone, would you like to describe that for the record and for the Committee?

Mr. TURNER. Thank you for this opportunity to walk into a mousetrap. The "all-citizens suit" is very complicated, and I think between Gary and me, we will try to make it as simple as we can.

The issue arises out of the Indian treaty right within and among Indian tribes in Washington, to harvest 50 percent of the stocks returning through their usual and accustomed fishing areas. The question arises, is a fish returning to Washington waters, but harvested by a U.S. citizen in Alaska, count as a non-Indian harvested fish for the purposes of these non-Indian allocations?

It was a huge issue in the negotiations leading up to the Treaty. A stipulation among all of the parties, including Alaska, was filed with the U.S. District Court settling the issue as to chinook.

In the intervening years from 1985 to today, we have been getting smarter about a lot of things, one of which is knowing now that Fraser River sockeye are being caught in Southeast Alaska. We did not know that at the time the Treaty was signed in 1985. This Treaty places a ceiling on Fraser River catch, which, practically speaking, has been a 7-million fish catch over 4 years. The issue then is, are the Fraser River fish harvested in Alaska by citizens of the United States non-Indian fish for the purposes of allocation?

If the answer to that is yes, then the non-Indian harvest of fish in Washington has to account for that harvest in Alaska. If the answer is no, then neither side pays for those fish and the harvest in Washington is unaffected. That is hopefully a simple description. I would ask if Gary James had anything to add to that.

Mr. JAMES. No, that pretty much covers it, and it gets to the base of the issue that Representative Swift brought in here in his testimony, and it is a very contentious issue, that there are agreements that are, at this point have that issue at bay in other portions of Washington and Oregon and Alaska.

Mr. TURNER. The case has been filed. It is scheduled for trial on October 3rd. I believe most, if not all, of the parties to the litigation have sought a delay in that trial date in hopes that we can resolve it among ourselves within the context of treaty negotiations.

Mrs. UNSOELD. Do we have confirmation that the Justice Department has made that request?

Dr. Matlock, do you know?

Dr. MATLOCK. No, ma'am, I don't know, but I will do my best to find out and get back to you as quickly as possible.

Mrs. UNSOELD. Because we were assured that was going to be part of the announcement when they didn't come up with a new agreement.

Mr. JAMES. My understanding is that they signed at the same time that all of the other attorneys signed for their clients.

Mrs. UNSOELD. OK. We will get confirmation.

I am going to try to just get us back on schedule and I believe that the gentlewoman from Oregon has been here the longest in the room for this. So go ahead.

Ms. FURSE. Thank you, Madam Chair.

A couple of questions, and one I might want to take you up on the offer of Rollie, perhaps, to answer one of the questions.

What are the consequences—and I would like everybody on the panel who wants to respond to respond—what are the consequences to Northwest salmon runs if the status quo were to continue indefinitely with no new harvest regimes? Can you respond to that, and perhaps Rollie could respond on the Oregon situation.

Mr. TURNER. First, I must caution everyone to recognize that 1994 in the Northwest is a rather unusual year, we hope, because of the compounding of several natural conditions that, given the law of averages, we would expect not to occur in succession. El Nino and the drought conditions are compounding the other problems that we have. Given the law of averages, one would think those things, which happen periodically, would not overlap quite as they have in 1994.

So if we saw a status quo in the Pacific salmon interceptions, we still might see a rebound in the number of fish returning, which is not to mask our other problems and challenges with habitat restoration and the like.

However, it will continue to cause the South, in particular, not to reap the benefits of whatever actions it takes. We have, as was illustrated in 1994, a very strong conservation ethic that closes our fisheries, frankly, in response to the fact that Canada is catching high levels of fish off the West Coast of Vancouver Island. We tried first to put the fish on the spawning grounds and we take pretty dramatic efforts in the South to do that. Therefore, the benefits of our actions are accruing to fisheries in the North, not to our own fishers, and that would continue to occur and be extremely frustrating.

We want to move the fishing regimes coast-wide, and I believe Canada shares this vision, of moving these regimes so that they are what we call "abundance-based management," so that they go up and down with abundance rather than fixed ceilings.

Ms. FURSE. Mr. James, do you have any comment on that?

Mr. JAMES. Yes. I think that, as we pointed out in the paper that we put together, for the sake of the salmon, without some major effort in stopping what we have been doing to this resource, we are at a level where we are at the mercy of ocean survival. And if it is good to us, we get a little more back; if it is bad to us, the result is compounded by the condition of the habitat. So it is something that has to be addressed specifically.

Similar to what has come out of the timber plan, we need to know how much fish are going to come out of that plan so everybody can be held accountable to produce. I think that will help us; it will clarify for everybody else that we deal with, this is what we are intending to do, and this is how we are going to do it. So I think that is, you know, my opinion on that.

Ms. FURSE. Mr. Meacham?

Mr. MEACHAM. Yes. Thank you.

I think the biggest problem is with El Nino conditions in the ocean, multiple years of drought conditions in the rivers, coupled with serious, serious habitat degradation problems, including hydro-development as well as other things.

I would have to say that, technically, the Canadians are living within the limits that we negotiated for those fisheries. But certainly they are not taking conservation needs to heart at this point.

But technically, they are living within the numerical constraints. If we didn't have El Nino, if we didn't have the drought years, had reasonable fish production—habitat is a little more difficult to address—I don't think we would be here today.

Ms. FURSE. But isn't it true that the Fraser River runs are extremely strong because of the conservation, and then you have no dams on those rivers, is my understanding, at least main-stem dams.

Mr. MEACHAM. I would agree with that, to the extent I understand Fraser, yes.

Ms. FURSE. May I ask one more question, Madam Chair. How do the Canadians come up with their position, their full commissioners, do they also have to reach consensus and then come forward with a Canadian position? Does anybody know how they do that?

Mr. JAMES. I believe that from what I can understand of the system that they have, it is a mirror image of what we have. Their Federal commissioner has absolute authority over the position that goes forward and their commissioners are advisory, whereas ours is—

Ms. FURSE. It is the reverse of what we have.

Mr. JAMES. Ours is the reverse of that.

Could I make a comment on the Fraser?

As much as we are on the downside of nature in some of our actions, they are on the upswing of nature in some of their actions. So everything that they have done and the benefits they are reaping aren't totally man-made, and they are at extreme heights of Fraser which could take a dive also due to impacts of the switching of El Nino and the changing of what is happening in ocean survival.

So what we see and the impacts of the levels of our fisheries at this time shouldn't be locked at the norm, nor what we see out of the Fraser should be looked at as the norm, and a judgment being made that while they are doing everything really well, and we are doing everything really poorly, that is not, I believe, the case.

Ms. FURSE. Thank you.

Mrs. UNSOELD. Mr. Kingston, do you have questions?

Mr. KINGSTON. Thank you, Madam Chair.

Dr. Matlock, as we speak, the Canadian Government has taken the captains of two American fishing vessels to court for fishing in waters allegedly under their jurisdiction. Are you familiar with that?

Dr. MATLOCK. Yes, sir.

Mr. KINGSTON. As you know, the Magnuson Act in Section 204 requires the Secretary of State to embargo fish and fish products

from a country that has acted as Canada apparently has acted in this situation. Do you know if the State Department is going to practice that part of the Magnuson Act, and if so, when, and if not, why not?

Dr. MATLOCK. If I may, Mr. John Bauman is here from the State Department and he probably can give you the most accurate and up-to-date information in response to your question, much more so than I, so if it is agreeable to you, I would prefer to let him answer the question.

Mr. KINGSTON. Smart move in Washington.

Madam Chairman, may I ask that question of him right now?

Mrs. UNSOELD. Without objection.

Mr. BAUMAN. I can confirm that—

Mrs. UNSOELD. Would you identify yourself for the record.

Mr. BAUMAN. My name is John Bauman, from the Office of Canadian Affairs at the Department of State, and I can confirm that the Department of State is giving serious consideration to the applicability of Section 205 of the Magnuson Act in the present circumstances.

Mr. KINGSTON. It is just like the serious consideration we are doing in some of the other negotiations with Canada where we just seem to talk and talk and talk.

Mr. BAUMAN. No, sir. This is the serious consideration that was reflected in the fact that R. J. Marsh was delivered to the Canadians within, I believe, nine hours of the time that the vessels were seized.

Mr. KINGSTON. Let me ask you this. I am really not trying to pick on you, but since the Magnuson Act requires this under Section 204, am I correct in interpreting your response to say that you are seriously considering following the law? I know that is kind of a snotty way to phrase it, but I would just like to know.

Mr. BAUMAN. It is Section 205, and yes, we are seriously considering the applicability of this section of the Magnuson Act.

Mr. KINGSTON. Which may or may not apply.

OK. Let me ask you another question now, and I appreciate that. The question on the Treaty with Canada on salmon, are they doing their fair share? Are they doing enough conservation? Are they doing enough to preserve the Fraser River, and I think—

Mr. BAUMAN. May I lateral on this question?

Mr. KINGSTON. They did it to you. Why not?

Mr. BAUMAN. My colleague from the Bureau of Oceans and International Environmental and Scientific Affairs is here, Mr. Greg Burton who is the Deputy who is a Federal member of the Pacific Salmon Commission, David Coals, and if I could turn it over to him.

Mr. KINGSTON. Madam Chair, is that OK? That was not my intention, but—

Mrs. UNSOELD. It is your five minutes, and when it is over, it is over.

Mr. BURTON. My name is Greg Burton with the Department of State, Bureau of Oceans and Environmental Science.

Mrs. UNSOELD. Would you speak closer in the mike.

Mr. BURTON. Greg Burton, with the Department of State.

I am sorry, could you repeat the question, sir?

Mr. KINGSTON. There goes my time.

Let me ask you this; in 1913, after the avalanche, did the Canadian Government help restore the Fraser River? Did they spend money to do that?

Mr. BURTON. Do you mean in the direct removal of the blockage to the Fraser River?

Mr. KINGSTON. Yes. In that they were going to enjoy the economic benefit of having the salmon run back open.

Mr. BURTON. I am not an authority on the history of that incident, sir, but my understanding is the U.S. Army Corps of Engineers was at least the primary mover in getting that blockage taken care of.

Mr. KINGSTON. In general, is the Canadian Government just as interested in preserving the run in the Fraser River as a good trading partner should be?

Mr. BURTON. My understanding is that they are.

Mr. KINGSTON. OK. How about in protection of endangered species?

I know that might be under Mr. Meacham's category, or whoever. Are they looking after the endangered species in recognition of the American efforts, Mr. Meacham?

Mr. MEACHAM. In my view, again while they may be living under technical limits of the Treaty, they are not living under the conservation provisions, and that would include proper concern for listed and endangered species.

Mr. KINGSTON. There are more endangered species in the Columbia Snake River than there are in the Fraser River; right?

Mr. MEACHAM. Absolutely.

Mr. KINGSTON. Which one does Canada fish in more, I mean, is there a relationship in that, can you draw any conclusion?

Mr. MEACHAM. They fish stocks from both rivers, the Fraser, of course, being in Canada is where they direct considerable activity. But, it is also the case that production out of Oregon, Washington, Columbia River, migrate off the West Coast of Vancouver Island where Canadians fish them heavily.

Mr. KINGSTON. OK.

Thank you, Madam Chair.

Mrs. UNSOELD. Thank you.

The gentleman from California.

Mr. HAMBURG. Thank you, Madam Chair.

I have just a few questions for the salmon commissioners, Mr. Meacham, Mr. James and Mr. Turner, and they have to do with the use of the concept of a selective fishery as a management tool for the West Coast salmon stocks. Commercial and recreational harvest of hatchery fish can be maximized by mass marking and selectively harvesting these fish, at least that is the idea, and that that will relieve the pressure on the wild stocks.

So my questions are, first, I understand that the Commission has been engaged in a study and an evaluation of selective fisheries and mass marking. I would like to ask if you could tell me something about the current state or stage of your analysis, and explain what the motivation was for the Commission to embark on this analysis. And whoever wants to start.

Mr. Turner?

Mr. TURNER. Well, all of the assumptions that you stated are, in fact, the hypotheses that lead fisheries managers to want to investigate selective fisheries. First of all, selective fishing is a generic term, and is a good management tool. Most of the regulations that we use today are intended to make fisheries as selective as they can be, whether by means of gear type, time, or area. All of those things are components of selectivity.

The recent debate, though, is about somehow marking fish in a manner that might provide some visible means of telling whether that fish is hatchery stock, and therefore harvestable, or wild stock, and one that we would like to conserve. In today's world, the selectivity issue focuses around mass marking and then the gear, the technology that would allow harvest to take advantage of that marking.

There are a huge number of scientific questions that you have to leap through to get from the hypothesis to the scientific conclusion. This includes questions such as: how many hatchery fish will suffer mortalities because of the marking that has to occur?

Mr. HAMBURG. Because of the marking, or the problems out in the oceans as far as the hooking.

Mr. TURNER. Well, I was going to get there.

Mr. HAMBURG. Oh, I am sorry. I don't have much time.

Mr. TURNER. You have to consider a lot of different scientific questions. One of which is, if California does it and if Oregon does it, if Washington does it and if tribes do it and Canada and Alaska—if everybody is marking their hatchery fish, that is a much bigger bang for your buck than if only Washington does, because then you have many more marked fish out in the fisheries. Because that coast-wide approach is viewed to be the best advantage, the Salmon Commission was viewed to be the umbrella organization that should pursue the science. As you pointed out, they are so doing, with the development of a computer model that will allow scientists and policymakers to look at the implications of the wide variety of assumptions that have to be built into that use.

It is our hope that by this winter, we will have that tool in place, and scientists will be able to use it in a way that will allow policymakers to decide whether this is a good tool or a bad tool.

Mr. HAMBURG. Could this tool help us at all with the problem of intercepting stocks being intercepted between the two countries?

Mr. TURNER. It will allow us to correct some of the problems interceptions cause, such as to wild stocks and the like, and harvest in general. It will allow us to reduce harvest on stocks of concern. Interception levels will occur anyway.

Mr. HAMBURG. Right. But we will know where the fish came from; is that correct?

Mr. TURNER. Not because of mass marking per se. We know where fish come from today because of our existing coded wire-tag system.

Mr. HAMBURG. OK.

Mr. TURNER. In fact, one of the issues we are concerned about with marking fish is whether or not it will allow that existing coded wire-tag system to maintain its scientific credibility.

Mr. HAMBURG. Right, right, as far as the fin clip and—

Mr. TURNER. Exactly.

Mr. HAMBURG. One other question and then I would like to ask if the other commissioners want to address these same issues.

Is mass marking and the establishment of a selective fishery consistent with the goals of the Treaty? I mean, in terms of conservation and maximization of productivity and the equity goal, in terms of each country reaping the benefit and the fish that spawn in their rivers, are these techniques, in your judgment, consistent with the goals of the Treaty?

Mr. MEACHAM. I would say the answer to that is yes. My view is all hatchery-produced fish ought to be mass marked in some fashion or another. That would be ideal. It is easier said than done, though.

Mr. HAMBURG. Yes. And more expensive than just saying it—yes, Mr. James, do you want to comment on this?

Mr. JAMES. Yes. I have a concern about, you know, the marking and tagging of hatchery fish was meant for, or its design was to find out what fish were being caught, and it is now being shifted to, well, how can we catch those fish versus other fish?

And I believe that gives us an opportunity to avoid addressing the question that we have a problem with salmon, and if people still are able to go out and fish and not have to put up with the impacts of the decisions that have been made that affect our ability to harvest them, then we will ignore the problem for a little longer.

Mr. HAMBURG. Mr. Turner, do you share that view?

Mr. TURNER. Yes. My answer was a conditional "yes." Yes, conditioned on the science saying that it makes sense. And please keep in mind that marking fish doesn't produce any fish. In fact, it is a way to go out and catch more fish. And we do not want to use that as an excuse to be blind to the problems that we have on the production side.

Mr. HAMBURG. But it does potentially have a good effect on the wild and natural stocks and allow them to replenish while we fish the hatchery fish.

Mr. TURNER. That is the hypothesis, but it has to be proven in science.

Mr. HAMBURG. Right.

Thank you, Madam Chair.

Mrs. UNSOELD. The gentlewoman from Washington has arrived.

Would you have some questions you would like to ask? Or enter a statement?

Ms. CANTWELL. Thank you, Madam Chairman.

I would like to submit my statement for the record.

[The statement of Ms. Cantwell follows:]

#### STATEMENT OF HON. MARIA CANTWELL, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. Chairman, I want to commend you and your staff for holding this extremely timely hearing on the Pacific Salmon Treaty. As you know, the last effort to negotiate 1994 fishing regimes broke down in mid-July. For the first time since the Treaty was signed in 1985, there will be no formal international agreement on salmon resource management between Canada and the United States. At a time when salmon resources in the Northwest are in a critical state of decline, the lack of an agreement should sound an alarm that our international fisheries management system is not working.

Today we have the opportunity to look in-depth at the Treaty structure—where it has succeeded, where it has failed and where changes must be made. The Pacific Salmon Treaty is an important tool for the management of intermingling salmon

stocks and a necessary component to our coastwide management strategy. This Treaty alone will not solve our salmon resource problems, but it is a critical element.

As members of the Committee with oversight, it is our responsibility to ensure that the Treaty process is effective and productive. Salmon have far-reaching economic, environmental, and cultural significance for the Northwest. We simply can not afford another year of failed Pacific Salmon Treaty negotiations. We must fix the Treaty process and continue to search for comprehensive solutions to bring our salmon resources back to healthy, sustainable levels.

I look forward to hearing from our witnesses today. They represent a wealth of fisheries management experience and knowledge of the Treaty, and I expect a positive exchange of ideas.

Mr. Chairman, again, thank you for your continued commitment to address Northwest salmon resource issues. Through your efforts and those of the Committee, I believe that we may yet find answers to these very complicated questions.

Ms. CANTWELL. But if I could just ask Mr. Turner a question, I am sorry I wasn't here for your testimony; I was over on the Floor speaking on another maritime issue.

But I guess I am curious as we go through our current process and obviously the frustrations in getting a united U.S. position, what changes do you think that we need to make to improve this process for next year's negotiations, if you could elaborate on that?

Mr. TURNER. If your question is specific to 1995, I would love to think that we could get in place a change in the legislation that would provide us a forcing mechanism for decisions. In my testimony and Gary's testimony, there is attached a proposal that would do that, that we have discussed this morning.

But if it is not possible to get that in place for 1995, I still would strongly urge the Committee to consider it for the long haul, because I do believe that is the road we need to take. But for 1995, I think we need to have a strong Federal voice in speaking to the Canadians.

Our understanding to date is that the negotiations with Canada, that fell out of the discussions on a government-to-government basis over the last several weeks, will lead to more government-to-government discussions in September. And in those discussions we have the assurance that United States negotiators will be in consultation with the commissioners, but they will go forward on a government-to-government basis with obviously a strong voice from the Federal Government. I think we ought to parlay that strong voice into an effective negotiation with the Canadians to deal with 1995.

Ms. CANTWELL. And so are you saying that the current process is flawed in that regard, that it doesn't clearly specify the process for the Federal Government to speak in a unified voice and we should clarify that in our—

Mr. TURNER. Yes. Very much so.

Again, our point is that we have no forcing mechanism for decisions, and we need to put one into place, the sooner the better. If it can't be put in place for 1995, that shouldn't deter us from trying to get it in place as quickly as possible. But we need to deal with the Canadians for 1995 and we should do so with a strong Federal voice.

Ms. CANTWELL. Mr. James, did you want to comment?

Mr. JAMES. Yes. I differ from Bob somewhat that we need a forcing mechanism, that portion is broken within the Treaty act. I am

not so concerned about the strong Federal voice as a strong U.S. voice coming out of the U.S. section of the Pacific Salmon Commission. And essentially since I am going to be Chair next year, I would like clear direction as to where we are going to be able to take this process.

Ms. CANTWELL. Mr. Meacham, do you have any comments on this, or any of the other panelists?

Mr. MEACHAM. Just a very brief comment, and that is relative to the proposal we have greater Federal Government involvement. I am concerned because 99.9 percent of the harvest of salmon in Southeast Alaska comes from within our State jurisdictional waters. I have a very difficult time, knowing Federal management of salmon in Alaska was abysmal. So I am concerned about any increase in Federal roles here.

I would much rather support a separation between northern negotiations and southern negotiations, where you try and solve these problems a little closer to home.

Ms. CANTWELL. But, obviously, having a treaty is a higher priority than just not having greater Federal involvement?

Mr. MEACHAM. Oh, I believe in the treaty process and in the framework, but as regards to giving up State responsibility, State authorities, in the process, I have a number of concerns.

Ms. CANTWELL. So you think this process has worked?

Mr. MEACHAM. It has clearly worked most of the time in northern areas. We have healthy salmon stocks in northern BC and very healthy salmon stocks throughout Alaska.

Ms. CANTWELL. But would you call the current situation in failing to get a treaty a crisis, or would you say that is just a—

Mr. MEACHAM. No, it is clearly a crisis for southern stocks. Again, northern stocks are healthy and we have been able to work out fishery arrangements, with a lot of help from mother nature, to keep them that way.

Ms. CANTWELL. Any of the other panelists like to comment?

Thank you.

Mrs. UNSOELD. I am surprised Dr. Matlock didn't comment when he was given the opportunity there, because I came back to you for a response on that, and perhaps also from Mr. Derwinski, and then we will have a vote and see how many of you agree on the changes that are being proposed and whether we have a consensus here. But it isn't my turn yet.

The gentleman from Alaska.

Mr. YOUNG. Thank you, Madam Chair.

I again state my reservation. I think Mr. Meacham put it very clearly. I don't think the Federal Government should have the final say in that regardless of what occurs, because it does shortchange Washington, Oregon, the tribes, and Mr. James agrees with that.

There may be a way to work out something within the Commission itself, maybe a majority, some type of view, but not the Federal Government, is something we may want to look at.

The Coast Guard gentleman has been sitting there very patiently. I just can't tolerate that right now. For the Coast Guard, what really brought this to the attention of everyone was the Canadian seizure or charging of fees through Canadian waters against international law. You know the Canadian fishermen fishing salm-

on at the Dixon Entrance are allowed to anchor in U.S. waters during the night. Now, why does the Coast Guard allow this to occur?

Capt. RIUTTA. First of all, I am Captain Riutta, Deputy Chief, Office of Law Enforcement and Defense Operations, Coast Guard Headquarters.

Primarily, sir, a reason for allowing this to occur is one of safety. The Canadians fish fairly close to the line and it is on the northern end of the Dixon Entrance. It is a long journey over some very treacherous and open waters, as you well know, back to the Canadian safe harbors, and we do this primarily strictly for safety of life at sea.

Mr. YOUNG. It is also a long journey on the outside waters to Alaska from Seattle and from Oregon, too. What actions does the Coast Guard take to ensure that the Canadian vessels obey the U.S. laws while anchored up in these waters?

I am talking about all of the different things that we have to follow; how closely do you review their actions?

Capt. RIUTTA. Sir, when Canadian vessels are going to anchor up, they are required to check with the Coast Guard.

Mr. YOUNG. Visibly, by radio?

Capt. RIUTTA. By radio.

Mr. YOUNG. What happens if they do something incorrectly?

Capt. RIUTTA. We patrol the anchorages on a regular basis. Generally, I think in the month of July, we were there 24 out of 30 days was the number I was quoted—

Mr. YOUNG. Let me interrupt you now.

To patrol by water or air?

Capt. RIUTTA. Both.

Mr. YOUNG. How many times in sight, in the vicinity of the vessel? How many vessels did you inspect?

Capt. RIUTTA. I don't know that answer, sir.

Mr. YOUNG. Would you find out for me?

Capt. RIUTTA. YES, I WILL.

Mr. YOUNG. How many vessels were boarded then?

Capt. RIUTTA. I don't know that either, sir.

Mr. YOUNG. You can find that out for me too?

Captain RIUTTA. Yes, I will.

[The information was supplied following the hearing.]

Coast Guard assets routinely operate in and around the three anchorage areas used by Canadian fishing vessels to provide a visible U.S. presence, with the intent of deterring any illegal or unauthorized activity. With this in mind, we attempt to see, and be seen, in the area by as many Canadian fishing vessels as possible. The number of fishing vessels utilizing the anchorages during any single patrol varies, depending upon the conditions; however, during one 11-day period in July, a cutter in the area visually inspected 78 Canadian fishing vessels. On 13 other days, a Coast Guard vessel entered the anchorages to visually ensure compliance with U.S. laws and to maintain a random enforcement presence; however, we do not have a count of the number of vessels sighted. The Coast Guard does not routinely board the vessels in the anchorage. We inspect the vessels visually to confirm that they are not engaged in fishing activity, discharging pollution, or blatantly violating other U.S. laws. Because the fishing vessels are anchored primarily to allow the crews to rest during the night, there is usually very little activity. It's very easy to determine when a vessel may not be in compliance, and if unusual activity is observed, a boarding would be done. No boardings were conducted during July.

Mr. YOUNG. Does Canada extend that treatment to any U.S. vessels?

Capt. RIUTTA. They allow our vessels that are transiting up the inside to anchor on a similar arrangement, I understand, where they are only required to call in if they are transiting. I don't believe our fishing vessels fish close enough to Canadian waters where they have to go into anchorage.

But if I could, I would like to just ask my colleague from headquarters if he knows the answer, Commander O'Shea from our Law Enforcement Division.

Do you know?

Commander O'SHEA. Yes, sir, it is only during transiting that our fishing vessels request permission by radio from the Canadians to anchor up overnight if they are in transit.

Mr. YOUNG. OK. I just want to make sure, when we do this ourselves, you wouldn't have any objection, or the Coast Guard wouldn't have any objection of somehow putting into maritime law, to have them treat our vessels identically?

What I am leading up to is they did withdraw the penalties on our vessel, and we may have stopped doing it. We haven't, you know, got our money back yet. But I think there has to be something done so that they don't repeat that.

We passed out of this Committee a bill that penalizes those that are doing now what they have taken for granted. But somehow along the line, I want to make sure Canada understands that the action that Mr. Tobin took was inappropriate, against international maritime law. That is law, transit is allowed. Somehow when we have to reinforce that, I hope the Coast Guard would back us up on that.

And I would again like to have, Madam Chairman, a report from the Coast Guard on the activities of their efforts in the Dixon Straits during this so-called "fish war." Because I have had too many differing complaints about not only the Canadians catching Alaskan fish within Alaskan waters, in fact, we did apprehend three vessels, but also breaking environmental laws that our fishermen are required to follow.

I am not trying to rub anybody wrong here; I just think that they have to realize this is supposed to be a British Columbia-Alaskan type effort, and when the Canadian Government really starts doing things that are inappropriate, we would like to see some way to respond to it.

Thank you, Madam Chairman.

Mrs. UNSOELD. Thank you.

All right, Dr. Matlock.

And Mr. Derwinski, from the standpoint of you having your past experience in observing what has gone on in the last couple of years, I would like your comments too.

But Dr. Matlock, what do you think of the proposal that has been presented; and as opposed to giving you a vote, a tie-breaking vote, if you would sort of discuss both concepts, please?

Dr. MATLOCK. Well, I have read the material very quickly while I was listening to the comments that were going on, so at the very least, the proposal is interesting. From a standpoint that some States would recommend to support a vote that would increase the Federal involvement in the decisionmaking process in the Commission, and others would not, that is interesting from the standpoint

that it is not really a surprise. It is probably inappropriate for me at this point to try to decide which side of that particular issue I come down on in trying to answer your question about the material attached to Mr. James' testimony.

Mrs. UNSOELD. Which side do you think the fish would come down on?

Dr. MATLOCK. Probably whichever side would give them the most possibility of surviving in the long term, and that probably changes through time, is my guess. With respect to the Federal Government having a vote on the Commission, I honestly have not given that any thought at all, so I don't have any response for you to that one.

Mrs. UNSOELD. Well, Mr. Derwinski, how about you?

Mr. DERWINSKI. Madam Chairman, I would have to go back to my days in Congress when some wise old Member told me when I was a young Member, that there were two groups in our society that were impossible to please, farmers and fishermen. And when you have a clash, you have the commercial, you have the sport fishermen, you have the Indians with their tribal rights and then you have the State issues involved; getting a consensus is always difficult.

The usual way you get it, though, is by a trade-off. That requires special emphasis. I would prefer that the States hammer out a consensus among themselves. I do not think in the long run it would be practical to have the Federal voice be the dominant voice when you have such strong traditional, very important State interests in each of the three States involved. I just don't see where superimposing a Federal decisionmaking process, which really means then ultimate jurisdiction, would be an answer that most fisherman would want.

Mrs. UNSOELD. We do need a forcing mechanism in situations as we now face with the conservation crisis facing—

Mr. DERWINSKI. You approach it in two different ways. I think you need a forcing mechanism to get the Treaty, to get the Treaty reestablished, and treaty rights, and then in the process, I think you could hammer out from within the structure of a new treaty, an agreed-upon method of breaking impasses.

I think those are separate questions. I would hope that you don't allow the situation to drift for 14 years, as the last negotiating processes with Canada continued. In the meantime, these gentlemen on my left meet regularly, they battle regularly, but they also understand each other's positions, when they will give and when they absolutely can't. I am convinced that they could hammer out some solution based on their experiences of the last eight or nine years.

Mrs. UNSOELD. You are convinced they could, but it hasn't been proven yet?

Mr. DERWINSKI. I think it would be in their interests, in their respective States' interest, that they could work it out at that level.

Mrs. UNSOELD. I suppose the inclination of the Commission members is apparent, that Mr. James and Mr. Turner have offered a specific proposal which Mr. Meacham has found falling somewhat short of what he would propose.

But how do we bring the parties then to the table, the U.S. parties to the table with a united position so that we do not continue

another 14-year drift? I don't believe that the salmon themselves can support another two-year drift, much less one year. And if the failure continues, I believe, rest assured, there will be an attempt to have legislative prodding, poking, pushing, some kind of forcing mechanism, or investing that tie-breaking vote in an entity, like it or not.

Mr. TURNER. Chairman Unsoeld, if I may, one thing that I would like to point out is that, unlike 1985, we have a situation today in which the decisionmaking structure gives great power to those vested in the status quo, because that is the decision, absent a change. In 1985, the status quo was unacceptable to everyone, for a wide variety of reasons that we can go through if necessary. But today, those who don't want to change are those who benefit from the status quo. Those who, because of the need for conservation or some other mechanism, require a change, are at a tremendous disadvantage.

It is ironic; in one of Gary's points made about the Klamath Council being a system delegated to the region, that is true, but I might point out that in that regime, nobody fishes until there is a consensus, which is an option that we and the tribes have put forth before, the so-called nuclear option.

Mrs. UNSOELD. Ah, that!

Mr. TURNER. Nobody fishes until there is an agreement, which is a forcing mechanism we proposed. However, it was rejected.

Mrs. UNSOELD. I had not heard that one before.

The gentlewoman from Oregon, do you have additional questions?

Ms. FURSE. I do have one.

First of all, I have studied treaties for a long time, 24 years, and I have always thought of treaties as being between two sovereigns, one voice from one sovereign, one voice from another. So this discussion is interesting to me, because here this Federal voice is sounding like that is something new or different, whereas it seems to me that is the sovereign voice that signed the Treaty with another sovereign nation.

Madam Chair, there are two alternate commissioners here, I understand, and both of them from Oregon, and I wonder if I might ask your indulgence if they might respond to this proposal.

Mr. Roland Rousseau and Ms. Kathryn Brigham are both here, and if it didn't take long, to just respond—

Mrs. UNSOELD. At least one of them.

Ms. FURSE. Yes, sure, thank you.

Mr. MEACHAM. Madam Chairman, I have an alternate from Alaska as well.

Mrs. UNSOELD. But you are here from Alaska, and Oregon doesn't have anyone at the table.

Mr. MEACHAM. OK.

Mrs. UNSOELD. I would ask perhaps one of them to respond.

Ms. FURSE. Just a quick response to the proposal by the commissioners. I don't know which of you would like to respond.

Mr. ROUSSEAU. I might ask which proposal?

Ms. FURSE. The proposal that has been made—

Mr. ROUSSEAU. Oh, OK. The legislative proposal.

I, personally, from the State of Oregon, at least—Rollie Rousseau is my name—favor that or some similar forcing mechanism. I truly believe the status quo, and that is what we have today, and that is what we have had for the last several years, and that is what we will continue to have, unless there is a forcing mechanism.

I am not a strong advocate of Federal oversight necessarily, but at the same time, we have a treaty that is a Federal treaty between two countries, and for allowing one State and/or one tribe to totally exasperate that and stop any action, I think is unconscionable as well. So in this situation, I certainly would encourage this Committee to look at options in that respect.

Ms. FURSE. Thank you, Madam Chair.

Mrs. UNSOELD. Do you have any other questions?

Ms. FURSE. No, that is all.

Mrs. UNSOELD. Mr. Hamburg? Ms. Cantwell? The Chair does.

I want to—if the panel would restore itself to respond to the charge that I have read and heard stated, that we in Washington State particularly have abused the resource. And so I would ask Mr. James and Mr. Turner, how would you respond to the challenge in the question that we have abused the resource and why should Alaska have to pay for the problems caused by our failure to address or respond to these habitat problems?

Mr. TURNER. Well, thank you, Chairwoman Unsoeld. First of all, the point that we have a challenge ahead of us to restore habitat in the Northwest is a terrific one and one that the President has addressed in his forest conference. We in the region are addressing this challenge in response to the Endangered Species Act, and as G.I. James mentioned, the comprehensive proposal that we are shopping around this town to rebuild stocks coast-wide.

Nonetheless, those problems are significant and they have reduced the numbers of fish that Canada intercepts from the south as a consequence of that reduced production. The southern interceptions of Canadian fish have also been reduced since the Treaty was signed. So what we hear from Canada is a great deal of concern about interceptions of Canadian fish in Alaska.

Nothing in the south has anything to do with the number of Canadian fish being intercepted in Alaska, and yet that is one of the primary concerns put on the table by Canada. Canada's response to those concerns compounds our problem, because they respond to Alaskan interceptions. I am not making a value judgment here, but Canada's response to increases in interceptions of Canada's fish in Alaska is to increase their interceptions of Washington-bound fish on the west coast of Vancouver Island. So not only are our stocks suffering from El Nino and drought, they suffer from the Canadian response to concerns about Alaskan interceptions with harvest on the west coast of Vancouver Island. So we get hit several times on the same issue.

Mrs. UNSOELD. So here is the \$64 question to Mr. Meacham: Hasn't Alaska increased its interception of Canadian fish?

Mr. MEACHAM. I would say that Alaska has increased the number, numerical count of fish that came from eggs laid in Canada. But you really do need to go one additional step and ask why that has happened. And the reason that has happened, at least in part, is associated with very much increased production. Skeena River,

probably 60, 70 percent of the production out of there, is now from Minam sockeye, and that river is just immediately south of the Alaska border. All those fish swim north. And while the numbers have gone up, as incidental catches have gone up very dramatically, the harvest rate of the fish from these different rivers has not gone up.

I mean, you know, we take 5 percent or 10 percent or 20 percent or whatever the number may be, and when you have a larger production, that number goes up, and yes, it has. It is in conjunction, though, with strong healthy fisheries in Alaska that we are trying to access.

Mrs. UNSOELD. But there—Canada does raise an equity issue, and the numbers, the actual numbers have gone up. They are not satisfied with this arrangement. So there is a necessary participation, a need for Alaska to come to the table to solve, to help solve the overall equity conservation and recovery of the species.

Mr. MEACHAM. Yes, I agree with you there, and we have done a number of things and are willing to do more if we are able to get together and talk with the Canadians.

Mrs. UNSOELD. I appreciate that comment. I am intrigued by the notion of no fishing until a position is hammered out. That one really grabs me.

Do any of the panel members want to make additional comments?

Mr. DERWINSKI. Madam Chairman—

Mrs. UNSOELD. Mr. Derwinski.

Mr. DERWINSKI. The no-fishing application would be rather extreme, but stopping a little short of that, when we did this Treaty 10 years ago, each country understood, and then in our case, our three delegations understood that we wanted the agreement that winter. Everybody was told our goal was to have this Treaty and we would, if necessary, stay in Vancouver, and Seattle, all winter until we had it.

Everybody abided by the rules that were set. The Canadians didn't walk away. Their Canadian senior advisor kept them there, and we kept all of our people there. And that had a very wholesome, practical, not just a psychological effect, it had a practical effect.

Mrs. UNSOELD. I have heard that negotiations could be expedited if people were locked in a room, beer was served, and then the restroom was outside the door.

Mr. TURNER. We have tried it.

Mrs. UNSOELD. I cannot let this meeting close without asking you to clarify an issue regarding the promised financial assistance being directed to salmon-dependent communities in the Northwest. Because it was May 26th that Secretary Brown, Director Panetta, announced an economic package of \$15.7 million in assistance for salmon fishermen and their communities, and stated that the funds were available that day and should within a matter of weeks become available in the communities.

It is now more than two months later. People in those communities are really feeling the pinch of the situation. Last night, I received a call from a reporter that quoted an administration official as saying that because new regulations needed to be developed,

money would not be available until October 1 at the earliest. In response to my call to Secretary Brown, I was told that the Department was not aware that this was going on, that they were concerned about the delay, and that they would speed this thing up.

What is going on and when will NOAA distribute the funds promised by Secretary Brown?

Dr. MATLOCK. In order to distribute the funds that were made available to the National Marine Fisheries Service and NOAA, there is a requirement that rules be developed within the statute. We are doing all we can and looking at the legal aspects of that to make the time to get those rules in place as short as possible. I don't know the source of the October 1 comment, but as far as I know, there is no time that has been fixed. At this point there has not even been a proposed rule published yet, so we are trying to get it out as quickly as we can so that the comment period is as short as we can make it, we get as much involvement from people and get the rules finished so we can begin to distribute the money.

Mrs. UNSOELD. Nobody is talking about proposed rules, we are talking about distribution of the fund that was already available.

Dr. MATLOCK. In order to distribute the funds that were made available under the Interjurisdictional Fisheries Act, there has to be a proposed and final rule completed under the Interjurisdictional Act statute. We are trying to get those rules done as quickly as we can, so that those moneys can be made available to people, because of the section of the act that was used, in order to make the funds available.

Mrs. UNSOELD. I did not bring with me, but I believe we pointed out to the Department this morning, the exceptions that can be made that are in the law itself. And I just find another month of comment period unacceptable to these communities.

Dr. MATLOCK. I certainly understand that, and we will do everything in our power legally to do what we can to get the money available as quickly as we can.

Mrs. UNSOELD. Are there any other comments?

Mr. HAMBURG. No. I just want to stand with you, Madam Chair, and I am in total agreement. And one thing that sort of fries me is that as Congresswoman Unsoeld said, on May 27 we were told these funds were available. Nobody said anything to us about the necessity of preliminary rules and final rules. All we heard was that we were going to have hearings in our communities, there were going to be decisions made as to how the funds could best be spent, and the money would be allocated.

And what happens to us in this situation is we are put out there making statements to our constituents, believing in good faith that those statements are true, and then later we found out there is all this bureaucratic morass that has to be gone through.

And I really don't enjoy being put in that position. I don't think my colleagues do, either.

Mrs. UNSOELD. If the Department is bound by it, then under the Vice President's Reinventing Government objectives, doggone it, you ought to find the attorneys to recommend how those regulations should be changed.

Ms. FURSE. I think so also, and I am very pleased you brought this up, because I think also we had hearings in our districts that raised the expectation that these people who are losing their homes, their boats, would be getting some relief. And I am very pleased that FEMA has come in and has accepted this as an environmental disaster and that will bring some funds to these communities. But yes, I hope that this will be done as soon as possible, and with the least bureaucratic tie-up.

Mrs. UNSOELD. I will let you off the hook for choosing which of the plans would be best to legislate, but I will keep you on the hook to carry that message back to the Department, please.

In the meantime, the Committee is adjourned. Thank you.

[Whereupon, at 4:04 p.m., the Subcommittees were adjourned, and the following was submitted for the record:]

TESTIMONY  
OF  
DR. GARY MATLOCK  
PROGRAM MANAGEMENT OFFICER  
NATIONAL MARINE FISHERIES SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

BEFORE THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
AND THE  
SUBCOMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
U.S. HOUSE OF REPRESENTATIVES

AUGUST 2, 1994

Messrs. Chairmen and Members of the Subcommittees: I am Gary Matlock, Program Management Officer for the National Marine Fisheries Service, National Oceanic and Atmospheric Administration. I am pleased to have the opportunity to testify before the Subcommittees on the state of the current United States-Canada Pacific salmon negotiations.

Introduction

The Pacific Salmon Commission (PSC) was established in 1985 under the United States-Canada Pacific Salmon Treaty (Treaty) after 14 years of negotiations. The Treaty addresses conservation and sharing arrangements for intercepting salmon fisheries -- *viz.*, those in which one or both countries intercept salmon produced in the other country. Through recommendations to the Governments of Canada and the United States, the PSC has maintained extensive salmon management programs (including catch limits and related regulations) for these fisheries. However, for the first time

since its inception, almost all PSC salmon management regimes expired at the end of 1993. They have not yet been renegotiated despite extended efforts both within the PSC and in exploratory consultations between senior government officials.

#### Background

The basic principles of the Treaty (set forth in Article III) call for the United States and Canada to work together "to (a) prevent overfishing and provide for optimum production, and (b) to provide for each Party to receive benefits equivalent to the production of salmon originating in its waters." The former is referred to as the "conservation principle," and the latter is referred to as the "equity principle."

The PSC is unique in that Federal law dictates that decisions can be taken only when there is no dissenting vote by the U.S. Commissioners from Alaska, the Pacific Northwest, and Treaty Indian Tribes. (The Federal Commissioner has no vote and can therefore only play a conciliatory role.) Given the competing interests represented by each of the Commissioners, obtaining consensus on key issues has often proven difficult and time-consuming.

The United States and Canada attempted to negotiate multi-year salmon management regimes in 1993, but were only able to achieve a one-year agreement. Considerable effort has been expended to

date in negotiations to again achieve long-term management regimes for 1994 and beyond. Unfortunately, the PSC did not reach any agreement on salmon fishing regimes at its annual meeting in Vancouver in February 1994. The current task is complicated by (1) the number of issues requiring simultaneous resolution, (2) Canadian insistence that an understanding on "equity issues" is a prerequisite to any agreement on future fisheries management regimes, and (3) markedly different salmon stock conditions (i.e., many Pacific Northwest chinook and coho salmon stocks are at record low levels, while many Canadian and Alaskan salmon stocks are more robust).

Equity

There is a Canadian perception that the United States receives substantially greater benefits from salmon interceptions than Canada does under the Treaty. As part of the one-year agreement in 1993, the United States and Canada agreed, among other things, to meet on a government-to-government basis in August 1993 to begin discussions toward agreement on an equity process. Since the August meeting, the two sides have held nine meetings on the equity issue. They have exchanged papers outlining views as to the framework within which the equity issue should be addressed. A bilateral technical working group has met several times to exchange views on methods of valuing benefits. However, little common ground for agreement has emerged. The Canadian approach envisions a narrow focus on calculating interceptions and

developing a simplistic "yardstick" using commercial fish prices to value benefits, whereas the United States takes the view that addressing benefits must encompass a much broader range of societal impacts, including recreational and other uses of salmon. In addition, the United States believes that any obligation by either party to redress any equity imbalance should be mitigated by circumstances related to conservation, natural phenomena, or certain unilateral actions of the other party.

#### Conservation

Pacific Northwest salmon conservation issues also present exceptional challenges. On April 8, 1994, the Pacific Fishery Management Council took a number of actions to conserve U.S. chinook and coho salmon stocks. The Council recommended elimination of all non-Indian ocean salmon fishing off Washington and northern Oregon and no fishing for coho salmon anywhere by any fishery in the ocean off Washington, Oregon, and California in 1994. These actions were necessitated by a combination of factors -- drought, the effects of *El Niño*, and long-term salmon habitat degradation -- resulting in managers' predictions of very poor salmon returns to the Pacific Northwest. The chinook and coho stocks in question are particularly affected by Canadian fisheries off Vancouver Island in southern British Columbia -- Canadian fisheries which were the subject of catch limits under expired PSC fishing regimes. The United States has emphasized the need for Canada to reduce its harvest rate on these depleted

stocks. However, until recently, only limited discussion of the conservation problems has been possible in view of Canada's (1) demand that equity issues be resolved on its terms prior to any agreement on 1994 PSC management regimes and (2) insistence that it receive offsetting benefits for any Canadian reduction in these fisheries.

The uneven status of North Pacific salmon resources has also complicated negotiations. Relatively healthy salmon stocks mix during the fishing season with declining stocks. It is difficult to conduct fisheries on healthy stocks without impacting depressed stocks. The U.S. listing of salmon under the Endangered Species Act (ESA) is a subset of this problem. The level of Canada's interceptions of ESA-listed salmon species directly affects the domestic U.S. fisheries management options that can be considered in ESA consultations.

The U.S. investment in the collection of the scientific information needed to address these conservation and equity issues is considerable. The foremost scientific needs for management of Pacific salmon stocks are documentation of stock contribution to fisheries. This information is especially critical for stocks of chinook and coho salmon that are harvested over broad areas by multiple fisheries in both the United States and Canada. The contribution rate of stocks to various fisheries and the timing and distribution of the stocks in fisheries

throughout their range are critical pieces of information required to rebuild stocks and to maintain them at healthy levels.

Currently, the Departments of Commerce, the Interior, and State are providing funding to implement the provisions of the Treaty. The Department of Commerce provided \$5,587,000 to the PSC programs in FY 1994, most of which was contracted to the States of Washington, Oregon, Alaska, and Idaho for a broad range of salmon stock assessment programs. Additionally, the Department provided \$400,000 as the U.S. share of the funding for the joint U.S. and Canadian salmon enhancement program on the Transboundary Rivers that flow through Northern British Columbia and Southeast Alaska.

#### Current Status of Negotiations

In view of the extended impasse in PSC negotiations, senior government officials of both countries undertook extraordinary efforts to explore approaches that would address both countries' conservation and equity needs. This initiative focused on ways of facilitating some resolution of PSC issues for the 1994 fishing season. Consultations were maintained with U.S. PSC Commissioners and key state and tribal officials to advance this end. Unfortunately, comprehensive solutions were not achieved. Yet, the United States and Canada have achieved sufficient progress to warrant continuing negotiations.

For 1994, in the absence of an interim agreement, the two countries have acknowledged their Treaty obligations -- particularly the obligation set forth in Chapter 7 of Annex IV that "...unless otherwise agreed, neither Party shall initiate new intercepting fisheries, nor conduct or redirect fisheries in a manner that intentionally increases interceptions." In addition, both countries are committed to act responsibly and observe conservation principles for 1994 fisheries.

The United States and Canada are still far apart on many key issues. Nevertheless, the Administration is committed to a serious continuing effort to facilitating a resolution of these issues. There are no easy solutions, however, as illustrated by the fact that the Pacific Salmon Treaty took 14 years to negotiate. The U.S. goal since the start of the latest round of negotiations has been the conclusion of multi-year fishing regimes which respect both conservation and equity. The basis has been laid to resume comprehensive negotiations in September to achieve this goal. Until then, we will be working closely with the U.S. Commissioners and state and tribal officials to develop the best approach to these negotiations.

Thank you, Messrs. Chairmen. I would be happy to answer any questions.

## DERWINSKI and ASSOCIATES

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August 2, 1994

In 1985, after 15 years of negotiation, the U.S. and Canada concluded the Pacific Salmon Treaty; it is designed to conserve and manage salmon stocks and to reconcile and balance interceptions. The fishing regimes established by the Treaty have all expired.

Achieving the Treaty, the legislation, and the settlement was extremely difficult. Despite a fundamental mutuality of interest between the United States and Canada in conservation and management of Pacific salmon, agreement could not be achieved for fifteen years. Throughout that period, fishermen on both sides of the border suffered, as many stocks declined, allocations were distorted, and enhancement and research were limited.

Since the U.S. and Canada have never agreed on an interpretation of equity, nor on a system of accounting for interceptions, this is reflected in the tortured language of the Treaty and the accompanying Memorandum of Understanding. Had the Canadian position been reflected in the language of those instruments, the United States would never have accepted them; the economic cost of fisheries-dependent communities in Washington State and Alaska would have been far too great.

Salmon which originate in U.S. rivers are often caught (intercepted) in Canadian fisheries before returning to U.S. waters, and vice versa. The U.S. and Canada have argued for many years about the balance, and value, of these interceptions.

The treaty contained several principles including, resource conservation, optimum production, no undue disruption of existing fisheries, maintenance of treaty Indian obligations, and the equity principle.

I understand that the United States and Canada have attempted to re-negotiate multiyear salmon management regimes, but, after protracted negotiations, were only able to achieve a 1-year agreement. Considerable effort has been expended to date in negotiations to again achieve long-term management regimes for 1994 and beyond.

In spite of the seemingly intractable nature of some of these issues, both sides have signaled willingness to continue working on them. A White House Press Release indicated that Prime Minister Chretien and President Clinton in a telephone conversation on April 22, 1994, discussed, among other things, the need for the two countries to work together on Pacific salmon issues. Since specific regimes were not agreed upon prior to the 1994 fishing season, both countries have attempted to avoid deliberate increases in salmon interceptions.

I am convinced that a domestic consensus is indispensable to a successful outcome in any fisheries negotiation with the Canadians.

In addressing this controversy, which seems to be growing not diminishing, we should focus on the official interpretation by the United States of the relevant provisions of the original Treaty. This interpretation is found in the "Message from the President" to the Senate in February 1985, transmitting the Treaty for advice and consent. It was on the basis of this interpretation that the Senate gave its advice and consent and the President ratified the Treaty. This document shows the complexities of the issues and, more importantly, the foundation upon which the United States in good faith may assert its position in defense of its important conservation and economic interests in the affected fisheries.

Cooperation is essential to the effective management of Pacific salmon. Conservation of salmon stocks that migrate across state, tribal, and national boundaries requires close coordination among all management entities. In the absence of cooperation, not only is conservation impossible, but also enhancement opportunities must be foregone, research is frustrated, and fair allocations cannot be achieved.

**TESTIMONY PRESENTED TO THE  
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE  
REGARDING  
THE PACIFIC SALMON TREATY**

by  
Charles P. Meacham  
Alaska Department of Fish and Game  
Juneau, Alaska

August 2, 1994

Mr. Chairman, my name is Charles P. Meacham. I am Alaska's Commissioner for the Pacific Salmon Commission, and Deputy Commissioner for Fisheries for the Alaska Department of Fish and Game. I have been a biologist with the Department for over 20 years. Previously I commercial fished 4 years, worked with the fish processing industry 3 years, and was a seafood inspector with the military for 3 years. I hold a life membership with the American Fisheries Society and am a member of the American Institute of Fishery Research Biologists. I am here today to testify on the Pacific Salmon Treaty, and appreciate the opportunity provided by the committee to do so.

Over the past decade, the Pacific Salmon Treaty has produced significant accomplishments in the conservation and wise use of our Pacific salmon resources. There is no doubt that, in the absence of a treaty, conservation of salmon stocks would have been significantly hindered and progress toward effective, cooperative management programs would have been substantially less.

However, progress toward treaty goals has not always been as rapid as we would have liked, and pre-treaty expectations have not been uniformly met throughout the treaty areas. It is appropriate, therefore, that we carefully review the first decade of treaty implementation with a view toward learning from our experiences and improving our use of the substantial conservation and cooperative management framework provided by this treaty. These committee hearings can significantly contribute to that process.

**ALASKA'S TREATY PERSPECTIVE**

Mr. Chairman, before addressing the specific treaty issues identified by the committee as the focus of these hearings, I would like to briefly speak to Alaska's general treaty perspective.

The State of Alaska actively supported ratification of the Pacific Salmon Treaty in 1985. Ten years later, in 1994, Alaska continues that support. Through the cooperative efforts of Alaskan and Canadian fishery managers, fostered by the treaty, very significant gains have been made in the conservation and wise management of intermingling salmon resources. These substantial gains justify the wisdom of support for the treaty.

The treaty principles of conservation, optimum production, and fair sharing are also fundamental to Alaska's fisheries management programs. In 1959, when the State of Alaska assumed responsibility for managing its fisheries, salmon runs had been drastically declining for two decades and were in serious trouble due to federal mismanagement and associated overfishing. With statehood, local fishery managers were encouraged to make tough management decisions to forego immediate harvest and dedicate fish to spawning escapements. Protection of critical salmon habitat was identified then and continues today to be the foundation upon which this valuable resource depends.

Alaska successfully rebuilt these depressed runs to the healthy levels which exist today. Alaska's salmon management has been described by W.F. Royce, an eminent fishery scientist, as "a model fishery management program."

Alaska's participation in the Pacific Salmon Treaty process has been guided by the fundamental principles of conservation and wise resource management. These principles are common to both the treaty and Alaska's own salmon management programs.

### **STATUS OF SALMON STOCKS**

At this time I would like to provide some general background information on the status of salmon stocks emphasizing the northern treaty area (Fig. 1).

#### **General Northern Treaty Area Salmon Stock Status**

The northern treaty area includes Southeast Alaska and northern British Columbia. In Southeast Alaska alone there are 5,370 identified streams and lakes producing anadromous salmonids. For the most part, salmon stocks originating in northern treaty areas do not intermingle with stocks from southern treaty areas (Vancouver Island and south), and fisheries in the two areas operate independently. An exception is chinook salmon which migrate and intermingle extensively between the southern and northern areas.

The status of Southeast Alaska salmon stocks generally parallels that of Alaska's statewide salmon stocks (Fig. 2). For two decades prior to statehood, stocks had been declining precipitously due to federal mismanagement and overfishing. This trend was reversed in 1959 when the state assumed management of its fisheries. Except for a brief period during the late 1960s and early 1970s when harsh winters reduced salmon survival and production, salmon runs have increased and now stand at record high levels.

Few conservation problems exist in northern treaty areas. When conservation problems do develop, immediate conservation closures are routinely implemented in-season. This strategy generally limits conservation hardships to a single year event rather than into a death spiral associated with multiple year over-fishing and back-to-back failures to achieve spawning escapement objectives.

#### **Transboundary River Salmon Stock Status**

Salmon stocks originating in the transboundary rivers are generally healthy. Cooperative management by Alaskan and Canadian fishery managers has improved under the treaty.

Chinook runs to the Taku and Stikine Rivers have reached escapement goals as a result of a cooperative rebuilding program actually begun in 1981, four years prior to signing of the treaty.

Sockeye salmon stocks are healthy, providing good spawning escapements and a harvestable surplus to both Alaskan and Canadian fishermen. Additionally, significant returns of enhanced sockeye salmon are beginning to occur from a joint enhancement programs.

#### **Alaska/Canada Boundary Area Salmon Stock Status**

Although the majority of salmon harvested in Southeast Alaska fisheries originate in Alaska, substantial intermingling of U.S. and Canadian origin salmon occurs in northern boundary areas adjacent to the Alaskan-Canadian border. Salmon stocks in this area are also generally healthy. Catches of many stocks are at or near all-time highs.

Cooperative efforts by Alaska and Canada to rebuild depressed Portland Canal chum salmon, begun under the Treaty in 1985, are proving successful. Bilateral arrangements were made in-season in 1994 to open areas of Portland Canal that had previously been closed to fishing.

Cooperation between Alaskan and Canadian fishery managers to respond in-season to conservation problems as they arise has been significantly improved by the treaty and this has benefitted boundary area salmon stocks and fishermen.

#### **Chinook Salmon Stocks Status**

The status of chinook stocks contributing to recreational and commercial troll fisheries in Southeast

Alaska has improved significantly since pre-treaty periods. Based on data provided by the Pacific Salmon Commission, 85% of the Southeast Alaska harvest of chinook come from hatchery stocks or wild stocks rebuilt or rebuilding, 9% from stocks categorized as indeterminate, and only 6% from stocks not rebuilding.

Although production, and thus harvest, of some far-north migrating chinook stocks originating in southern Treaty areas has declined due to poor survival conditions, escapement goals are still generally being met.

In summary, salmon returns in northern treaty areas are generally healthy. This can be attributed to favorable environmental conditions, environmentally sensitive development activities, and conservation directed and cooperative fisheries management activities associated with the Pacific Salmon Treaty.

### **Pacific Northwest Salmon Stock Status**

In contrast, Pacific Northwest salmon stocks are experiencing grave difficulties. The American Fisheries Society, a professional society of fisheries scientists and managers, published a report in 1991 that documented 106 Pacific Northwest salmon stocks as extinct and 214 stocks at risk of extinction or of special concern. Since this report, the National Marine Fisheries Service has listed a number of these stocks as threatened or endangered. Furthermore, they have received petitions to list hundreds of additional stocks from the Pacific Northwest, including the following:

All Steelhead Trout Stocks in CA, ID, OR, & WA (178 stocks)  
 All Coho Salmon Stocks in CA, ID, OR, & WA  
 Mid-Columbia River (WA) Summer Chinook Salmon  
 White River (WA) Spring Chinook Salmon  
 Dungeness River (WA) Spring Chinook Salmon  
 North Fork Nooksack River (WA) Spring Chinook Salmon  
 South Fork Nooksack River (WA) Spring Chinook Salmon  
 Baker River (WA) Sockeye Salmon  
 Hook Canal (WA) Summer Chum Salmon  
 Mud Bay/Eld Inlet (WA) Chum Salmon  
 Elwha River (WA) Pink Salmon

The demise of Pacific Northwest salmon stocks represents a tragic loss of cultural as well as economic values to both present and future generations. Significant habitat restoration efforts coupled with conservative fisheries management efforts, as undertaken by the Pacific Fisheries Management Council in 1994, are required to rebuild these stocks.

### **TREATY SUCCESSES--AND SHORTCOMINGS**

I would now like to briefly discuss some of the treaty's successes, and some of its shortcomings from the northern perspective.

#### **Pre-treaty Expectations**

When the treaty was ratified in 1985, there were many expectations--some of them realistic, others not. People generally believed the treaty would improve cooperation between the two countries in conserving and managing intermingling salmon stocks. Managers and fishery scientists anticipated that such cooperation would contribute to increased knowledge regarding the status and nature of the salmon runs, and the effects of fisheries harvesting these resources. Fishermen, many of whom were apprehensive over some of the changes, generally believed the treaty would improve their future. These were all realistic expectations, and they have been met to varying degrees.

#### **Coastwide Chinook Rebuilding Program**

A coastwide chinook rebuilding program established under the treaty in 1985 reversed a trend of overfishing and under escapement for many chinook salmon stocks. The 15-year rebuilding program was to achieve escapement goals by 1998. The best results to date have been for chinook originating in northern treaty areas, and for "far-north" migrating chinook which originate in southern treaty areas. Escapement goals are now being met for most major stocks. Based on Pacific Salmon Commission data, only 6% of the Alaska harvest comes from stocks categorized as not rebuilding.

However, some chinook stocks which originate and remain to rear in southern treaty areas have not been adequately protected, in part due to deviations from "pass-through" provisions established by the treaty. Many Columbia River chinook salmon stocks have been exterminated or drastically reduced as a result of hydropower development, and it is clearly not possible to reverse such population declines through fishery actions alone.

A number of these Columbia River stocks, such as Snake River chinook and sockeye, have been listed as threatened or endangered under the U.S. Endangered Species Act (ESA), and additional future listings are likely. In fact, hundreds of Pacific Northwest salmon stocks are currently being considered for ESA listing. Many of these stocks will not recover unless a major habitat and

restoration initiative is undertaken.

Furthermore, recent production of many southern U.S. chinook salmon stocks (as well as coho salmon) have been significantly depressed due to droughts and unfavorable El Nino ocean conditions. Although conservation measures have been successful in maintaining spawning escapement goals for some stocks, production and harvest is significantly below optimum levels. While some individuals have mistakenly asserted that this is due to faulty implementation of the treaty, clearly the treaty cannot prevent such natural occurrences.

#### **Conservation and Management on the Transboundary Rivers**

In the transboundary rivers, the Taku, Stikine, and Alsek, portions of which are located in both countries, coordinated salmon management programs are implemented by Alaska and Canada under the Treaty. These programs ensure conservation of these shared salmon resources and divide harvests between fishermen of the two countries.

Cooperative U.S./Canada conservation and management programs on the transboundary rivers have been successful. Conservation problems have generally been avoided and harvests are at high levels.

A major cooperative sockeye enhancement program initiated in 1989 began producing increased benefits to fishermen of both countries this year. Approximately 200,000 adult sockeye salmon per year will return from these projects on the Stikine and Taku Rivers when they reach full production.

#### **Northern Boundary Area Conservation and Management**

The treaty limits sockeye catches in two United States fisheries--the Tree Pt. gillnet fishery and the Noyes Island purse seine--where substantial numbers of Canadian origin sockeye intermingle. Treaty limits are also imposed on two Canadian fisheries--the Area 1 troll and Area 3 net--where large numbers of Alaskan origin pink salmon intermingle.

These treaty limits are imposed in a manner which controls harvest of intermingling non-local stocks while providing each country the flexibility to harvest domestic stocks. In addition to managing for treaty harvest limits, Alaskan and Canadian managers coordinate in-season management to respond to any conservation problems which might arise for intermingling salmon.

In the northern boundary area, a cooperative rebuilding program for Portland Canal chum salmon has been successful. In 1994, natural production improved sufficiently to allow both countries to re-initiate fisheries in areas previously closed.

Treaty fishery agreements have successfully limited catches in several fisheries with high levels of intermingling, namely Canada's Area 1 troll fishery, and Alaska's Tree Point gillnet fishery and Noyes Island seine fishery prior to statistical week 31 (approx. last week of July). In the absence of treaty limits, substantially larger harvests of intermingling stocks would have occurred every year since 1985.

On the other hand, Canada's Area 3 net fisheries are currently 9.8 million pink salmon over the treaty's average annual limit and a substantial proportion of these fish originate in Southeast Alaska. Incidental catches of Canadian origin sockeye have also increased in Alaska's Noyes Island seine fishery after the treaty limit period (approx. third week in July) when the fishery is conducted to harvest Alaska pink salmon returns. This Alaska fishing area is key to accessing the largest pink salmon resource in North America.

Several factors have contributed to these increases including larger natural and enhanced Canadian sockeye runs. Skeena River, located immediately south of the Alaskan border, enhancement efforts alone have flooded millions of sockeye into Alaskan waters. Anomalous El Nino ocean conditions also pushed additional Canadian salmon north into Southeast Alaska, where they mix with very large Alaskan pink salmon.

As United States fishermen harvested these very abundant Alaskan pink salmon stocks some

Canadian salmon were taken incidentally. Recent increases in incidental catches of Canadian sockeye are associated with greater than average fishing effort directed at record level Alaska pink salmon stocks and with an increased presence of Canadian fish flooding across the Canadian border into Alaskan waters.

#### **Scientific and Fishery Information**

Another area where the Treaty has met pre-treaty expectations is in the compilation and exchange of scientific and fishery information on salmon stocks and fisheries of interest to the Pacific Salmon Commission. Each year numerous fishery and technical reports are prepared and exchanged between fishery managers and scientists of the two countries.

There is no doubt that, in the absence of the Pacific Salmon Treaty, decades would have been required to accumulate the voluminous information on Pacific salmon stocks and fisheries which has occurred during the first ten years of the treaty. This expanded knowledge and understanding of salmon stocks and fishery interactions has significantly contributed to improved conservation and wise management of these resources.

#### **Equitable Harvest Sharing**

Perhaps the area where the least progress has been made since 1985 is in reaching an understanding between our two countries as to what constitutes a fair and equitable sharing of intermingling salmon stocks. Several decades of pre-treaty negotiations were also unsuccessful in resolving this issue. Recognizing the complexity of the "equity" issue and being unable to resolve it, negotiators of the 1985 treaty passed the problem along by providing some general treaty principles and considerations and leaving it to the newly formed commission to interpret and implement. The negotiators acknowledged that the issue would not be quickly resolved.

One Canadian perspective on equity that is particularly troubling is the contention that any salmon produced from an egg located in a Canadian hatchery or stream is 100% Canadian owned, where ever it may roam (some may say trespass). Through natural genetic programming most salmon swim to the north. Many move across the Canadian border into Alaska territorial waters early in their life history at the size of a minnow where they feed and grow to full size adult salmon. Not only do these foreign salmon compete for space and food with United States salmon, but their simple presence either disrupts domestic fisheries or unilaterally impose a "debt" on the United States even if only incidentally caught. I view salmon born in Canada and raised in the United States as jointly produced, shared, fish requiring cooperative management and allocation. No exclusive property right should be assigned to these jointly produced fish.

The commission has spent a very considerable amount of time since 1985 in attempting to develop a mutually agreeable equity framework. During the past year, the governments of the two countries also conducted a series of meetings focused specifically on the equity issue, and while substantial progress was made, substantial differences remained between the two countries. More recent government-to-government meetings appear to have agreed on a process, including a date certain schedule and a potential international dispute resolution mechanism.

While the exact nature of the equity solution is unclear, one thing is abundantly clear. Differences between the United States and Canada regarding interpretation and implementation of the treaty's equity provision should not be allowed to hinder progress on conservation and wise resource management which we have proven is possible under this treaty. This was the pragmatic decision made by treaty negotiators in 1985, and it is equally valid today.

### **THE PACIFIC SALMON COMMISSION PROCESS**

Mr. Chairman, the Committee has posed a series of questions relating to the decision making process of the Pacific Salmon Commission which was established to implement the treaty.

- 1) **Is there an alternative to the management regime in the Pacific Salmon Treaty? Is unilateral fisheries management of mixed stocks possible?**

I would like to answer the second part of this question first. If by "unilateral" we mean isolated and uncoordinated management conducted separately by each country, then, in my view, effective unilateral fisheries management which ensures conservation and maximizes benefits from intermingling salmon stocks is probably not possible. There have been numerous examples in international fisheries to substantiate this. A cooperative, well-coordinated management program envisioned by this treaty is essential.

Is there an alternative to the management regime in the Pacific Salmon Treaty? There is no single treaty management regime, but rather a number of distinct annex/chapters structured to address specific fisheries and stocks. The treaty management regimes established in 1985 provided a good starting point by addressing some immediate stock conservation concerns and providing stability in fisheries which had been lacking prior to the treaty.

Experience gained since 1985 has shown, however, that while some of the initial regimes have worked fairly well, others have not. For example, coordinated in-season management regimes for the Fraser River and transboundary rivers which are responsive to annual fluctuations in salmon runs have been reasonably successful in addressing conservation concerns as they arise and in providing harvest shares agreed to under the treaty.

On the other hand, management regimes based on fixed ceilings or catch limits, which do not take into account annual fluctuations in salmon runs, have been less satisfactory. The Commission has been dedicating a substantial amount of effort to identify options for "abundance-based" management regimes to replace the less flexible, fixed catch limits. Properly designed, such approaches would be more responsive to conservation problems as they arise, and provide for a more balanced sharing of annual salmon harvests.

**2) What are your specific goals for the Pacific Salmon Treaty and for the resources of concern to the panel you represent? Which of these goals are being accomplished as the treaty is currently administered and which are not?**

As Alaska's Pacific Salmon Commission Commissioner, my primary goals are those of the Pacific Salmon Treaty:

- a) conservation of salmon stocks,
- b) optimum production from salmon resources,
- c) equitable sharing of intermingling salmon.

In addition, I have two related goals:

- d) increased stability and predictability of fisheries crucial to the welfare of Southeast Alaska's many small, rural communities which depend on these resources, and
- e) improved cooperation and "good-neighbor" relationships between Alaskan and Canadian managers, fishery scientists, and fishermen.

Which of these goals have been accomplished as the treaty is currently administered and which have not? All of these goals have been met to some degree. As noted in my earlier testimony, salmon stocks in the northern treaty areas are generally healthy and few conservation problems exist. However, some opportunities still exist to expand salmon production through cooperative enhancement programs in a manner which helps achieve overall treaty goals, including equity, and increases benefits to fishermen of both countries.

For example, Alaskan and Canadian managers and fishermen on the northern panel mutually agreed on an approach for a joint chum salmon management and enhancement program in the northern boundary area. Unfortunately, to date, Canadian commissioners have not approved Canada's participation in this program.

Stability and predictability of treaty fisheries important to Southeast Alaska's fishing communities have generally improved compared to pre-treaty periods, but there is room for additional progress. Cooperation between fishery managers and scientists has increased substantially under the treaty.

Although the relationship between the two governments deteriorated during the past year due to differences of views regarding treaty implementation, it appears that a positive process to resolve differences has been agreed to beginning this fall.

In my view, the treaty provides the basic framework to allow and encourage the two countries to build on the significant progress already made since 1985. To take advantage of this framework, we must learn from our past experiences and be willing to investigate new and innovative ways to share in the production and benefits of our mutual salmon resources.

**3) What are the main obstacles to achieving a unified United States negotiating position, and what are your specific recommendations for reaching a negotiating position?**

To put my answer to this question in proper perspective, it is important that the committee be aware of the fact that the United States has on most occasions, beginning with the 1985 treaty, achieved a unified United States negotiating position. In fact, this has been the rule, rather than the exception.

I know that members of this committee clearly understand the complexity of fisheries issues and decision processes in each of your individual constituent states. The United States Section of the Pacific Salmon Commission multiplies that complexity several fold, representing three primary states--Alaska, Washington, and Oregon--plus more than twenty Indian tribes. Thousands of salmon stocks, hundreds of fishing communities, and numerous regional decision processes are involved.

Although the United States Section decision process for achieving a unified position is sometimes long and tedious, requiring consensus of the three Wash./Oregon, Alaskan, and Tribal commissioners, it respects and accommodates to the maximum extent possible the collective needs and interests of the participating parties.

It is entirely appropriate and important, however, that the United States periodically review its participation in the treaty with the objective of making that participation as effective and efficient as possible.

What are some of the obstacles which on occasion prevent the United States Section of the Commission from reaching a unified negotiating position? Obstacles which hinder and, on some occasions, prevent the United States Section from reaching an agreed negotiating position can be categorized as "fundamental" and "procedural" factors.

One example of a fundamental obstacle is when state and/or tribal interests compete directly for harvest of a salmon stock or group of stocks such as chinook or Fraser sockeye salmon. This represents a classical resource "allocation" problem. In the United States Section, competing users are required to reach a consensus sharing arrangement. (Within each voting unit, there are also often numerous competing interests which delays decisions on an individual vote.)

Another example of a fundamental obstacle which sometimes hinders reaching agreed United States negotiating positions in a timely manner is the differences in regional management approaches. For example, "weak stock" management approaches sometimes used in Pacific Northwest fisheries differ from general mixed stock management approaches employed in Canada and Alaska. In the case of chinook salmon, the United States Section has made progress in developing compromise management approaches.

A more complex fundamental problem, of an indirect nature, also exists. Canada frequently employs a negotiating strategy of attempting to leverage one United States interest against another. For example, Canada may withhold concessions to Pacific Northwest fisheries in an attempt to obtain concessions in totally unrelated fisheries in Southeast Alaska. This artificially generates indirect competing interests within the United States Section and impedes timely decisions.

A procedural obstacle which sometimes hinders timely achievement of an agreed United States negotiating position is the consensus requirement for the three voting United States Commissioners representing Wash./Oregon, Alaska, and the Tribes. The form of the United States decision process was essential to obtaining regional support for the Treaty in 1985. While considerable time may be required in some cases to arrive at compromise solutions, the consensus process best protects regional interests while maximizing collective United States interests. It also helps ensure that decisions affecting regional fisheries and salmon management programs are made by regional "experts" most familiar with those programs.

Another procedural obstacle is an informal requirement sometimes invoked that all elements of a U.S. negotiating position must be agreed to before a U.S. position can be forwarded to Canada. This can result in disagreements on a relatively minor issue delaying agreement on a total U.S. position.

**Recommendations for reducing and minimizing obstacles to reaching timely decisions on U.S. negotiating positions.**

i) **Establish separate Southern and Northern treaty area processes where possible.**

To eliminate or minimize artificial regional conflicts within the U.S. Section, separate Southern and Northern Commission negotiating processes should be established to develop fishery and stock arrangements. Coastwide treaty issues such as chinook and equity would still be dealt with by the full Commission.

ii) **Discourage informal requirements for "total package" decisions.**

The ability of the United States Section (or the Commission) to reach agreement on a broad array of issues should not be compromised by failure to agree on one or two minor issues. The standard operating procedure should be to move forward with those arrangements for which agreement is possible.

iii) **Expand and encourage United States Section and Commission policy and technical investigations to resolve regional differences in management approaches.**

In cases where regional differences in management approaches act as deterrents to consensus United States positions, the United States Section should encourage policy and technical investigations (perhaps through internal work groups and outside expert advisors) to develop acceptable solutions.

**4) How might the Federal government contribute constructively to the negotiating process? Should the federal government have the authority to negotiate unilaterally, or to encourage the States and Tribes to reach a unified position?**

The federal United States commissioner, Dave Colson, has contributed very substantially to the United States and bilateral commission negotiating process since 1985. In rotation with other United States commissioners, he has served as the chairman of the United States Section. He has frequently acted as the United States spokesman in the commission on issues relating to the treaty's equity principle. On numerous occasions, the federal United States commissioner has effectively served to mediate differences and facilitate agreements on various negotiating positions within the United States Section. Finally, he has provided expert advice on general treaty process and obligations.

The role of the federal United States commissioner (and alternate commissioner) could be enhanced if more time was dedicated to the Pacific Salmon Commission process. Current heavy commitments to numerous other international affairs makes this difficult.

It would not be appropriate for the federal government to have the authority to unilaterally negotiate regional fishery arrangements. Fishery conservation and management programs are best developed by regional fishery managers and scientists most familiar with local fisheries. Serious state-right issues are raised as well. In excess of 99% of the salmon caught in Southeast Alaska are taken from State of Alaska territorial waters--not the federal EEZ. Maintaining regional control of fisheries management programs through the current United States Section decision process was, and continues to be, essential to gaining regional support for the treaty.

It is appropriate for the federal government to encourage the tribes and states to reach a unified United States Section position when differences exist. This can be done by assisting in developing alternative positions, evaluating benefits and consequences of alternative positions, and generally mediating between different United States interest groups.

The role of the federal government in the United States Section could also be enhanced by coordinating and expanding general participation by regional federal representatives from the National Marine Fisheries Service (NMFS). NMFS representatives are currently members of the

regional panels, and in some cases--such as the Fraser Panel--serve as United States chairs of those panels. With regard to panel chairman, such close interactions with regional panels can reduce the potential effectiveness of federal representatives to serve as neutral mediators to assist in resolving differences between the states and tribes. Federal State Department and NMFS representatives to the commission could form a federal team whose primary objective would be to help facilitate United States negotiating positions.

#### CONCLUDING REMARKS

During its first decade of existence, the Pacific Salmon Treaty has contributed significantly to the conservation and wise management of salmon stocks which intermingle in waters of the United States and Canada. Knowledge necessary to manage these valuable resources has been greatly expanded through cooperative technical and scientific efforts of the two countries. The framework and principles embodied by the treaty provide the basis for future progress. However, improvements in the commission process, including more focused northern and southern negotiations, are needed to increase its effectiveness and efficiency.

Salmon stocks in northern treaty areas are currently healthy and production is at high levels. Few conservation problems exist. As a result of the treaty, transboundary river salmon stocks are now jointly managed. Cooperative efforts by Alaskan and Canadian fishery managers to ensure conservation of intermingling salmon stocks in the northern boundary area have improved significantly. Joint salmon enhancement projects have been initiated in the transboundary rivers and other enhancement opportunities have been discussed.

Recent significant declines in Washington and Oregon coho and chinook salmon stocks caused by droughts, unfavorable El Nino ocean conditions, and long term habitat degradation have created new challenges for the Commission. Reduced harvests of these stocks by Canadian fisheries off the west coast of Vancouver Island has upset the balance for Washington State catches of Fraser River sockeye stocks which are currently at healthy, high levels. Canada has been reluctant to further reduce its west coast Vancouver Island fisheries to address conservation concerns for United States coho and chinook stocks unless resulting catch imbalances are addressed in the near term.

To address this problem in the longer term, it is essential that the United States implement a major habitat restoration and enhancement initiative for Pacific Northwest salmon stocks.

The challenge of the next decade of the treaty will be to use the experience gained during the first decade to build on the progress already made. Inabilities to find quick solutions to very complex problems must not be allowed to prevent progress on cooperative salmon conservation and management programs which is possible through known solutions. However, the two countries must also rededicate their efforts to find innovative solutions to complex, unresolved problems. This will clearly be in the best interests of the Pacific salmon resources and the fishing communities which share these resources.

### Appendix 1

#### EXAMPLES OF U.S./CANADIAN COOPERATION ON CONSERVATION ISSUES IN NORTHERN PACIFIC SALMON TREATY AREAS

Relatively few significant conservation issues have arisen in the northern treaty areas since the signing of the treaty. This is because survival conditions have been very good, returns of many stocks have been near record levels, and fisheries have been managed conservatively.

##### Transboundary Rivers

For many years prior to the treaty, the U.S. unilaterally managed the transboundary (TBR) salmon stocks since there were only minimal Canadian fishing activities on these rivers. With the exception of chinook, no stocks were seriously depressed prior to the treaty. In 1981, four years prior to the signing of the treaty, Alaska initiated a chinook rebuilding program for Southeast Alaska chinook stocks, including TBR stocks, with extensive limitations on Southeast Alaska fisheries. Canada subsequently joined this effort. The extensive joint upgrading of the stock assessment programs (with Pacific Salmon Commission funding from both sides) combined with good survival conditions have greatly improved the status of stocks on these rivers.

To the extent that the U.S. and Canada have cooperative inseason management programs on the transboundary rivers, such as for Taku and Stikine River sockeye and chinook salmon, Canada annually cooperates with the U.S. in evaluating actual salmon returns and conducting management activities to achieve escapement goals.

Alaska and Canada initiated a cooperative sockeye enhancement program several years ago under the treaty. Eggs taken from sockeye salmon in Canada are incubated in an Alaskan hatchery, then released in underutilized lakes tributary to the Taku and Stikine rivers. Initial production goals were 100 thousand sockeye for each system. Initial returns will occur in 1994.

##### Alaska/Canada Northern Boundary Area

Examples of Alaskan responses to conservation concerns for intermingling Canadian stocks in Southeast Alaska fisheries are listed below:

1. In 1994, during the early weeks of the fishery, U.S. managers implemented conservative fishery openings, including closure of a southern portion of the Tree Point gillnet fishery, in response to a Canadian request to conserve Nass River sockeye.
2. Inseason conservation measures for Nass sockeye were previously taken in 1981, 1983, 1987, 1988, and 1989. Fishing times were also reduced in other years in response to reduced sockeye presence in the fishery although specific stock weaknesses were not identified.

3. The Alaska/Canada border runs the length of Portland Canal and chum salmon stocks in this area were depressed for many years. A rebuilding program was undertaken through closure of a number of fishing areas within the canal. In 1994 chum salmon finally returned in healthy numbers. Bilateral agreement was reached to open much of the canal that had previously been closed and fishermen from both countries are currently benefiting.
4. In 1994, the U.S. limited fishing time during the initial opening of the District 4 (Noyes Island) purse seine fishery to reduce the exploitation rate on weak returns of Nass and Skeena river sockeye. Reductions in the pre-week 31 District 4 sockeye harvest were discussed with Canada. Discussions also occurred regarding week 31 fishing strategies to ensure that the District 4 fishery targets pink salmon while avoiding incidental catches of Canadian-origin sockeye.
5. Through the renegotiation of the Northern Boundary Area Annex fishing regimes, the U.S. has responded to Canada's stated need to access its pink salmon returns with its troll fleet in Area 1. This has resulted in increased Area 1 annual troll fishery pink catch limits from 500,000 at the signing of the treaty to 600,000 in 1986 and to 1.3 million in 1990. A significant portion (40% to 60%) of Canada's Area 1 troll pink harvest consists of U.S. stocks. No direct "compensation" for these increases were required by the United States.
6. Regarding the early Skeena coho conservation concern raised by Canada, Alaska has offered to undertake a joint technical review of all aspects of this issue to determine the nature and extent of the conservation problem and consider conservation options. However, this stock appears to be mixed throughout many fishing areas inhabited by very healthy Alaskan coho stocks. Skeena coho are estimated to constitute only approximately one half of one percent of the Southeast Alaska coho abundance. Early season coho catches in Southeast Alaska have been reduced, however, as a result of management restrictions required for treaty implementation for fisheries targeting chinook and sockeye.
7. Alaska has discussed Canadian concerns regarding incidental catches of steelhead in net fisheries targeting other species of salmon. Alaska was prepared to discuss some approaches to minimizing incidental steelhead catches, however, Canada broke off general Treaty negotiations. In January 1994 the Alaska Board of Fisheries unilaterally implemented a regulation on non-sale of incidentally caught steelhead in Southeast Alaska purse seine fisheries.

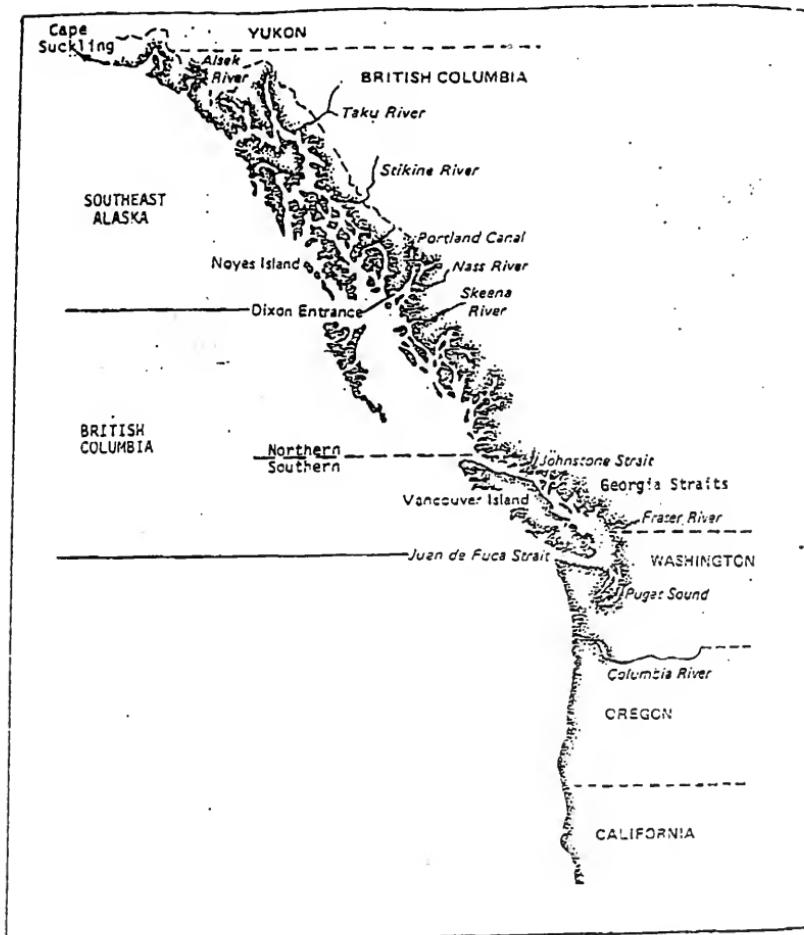
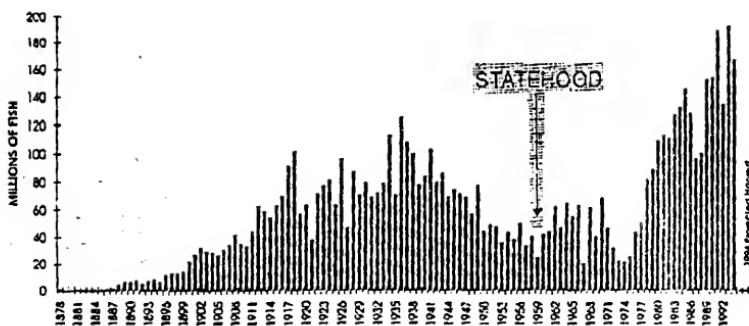


FIGURE 1. GENERAL LOCATION MAP OF PACIFIC COASTAL AREA FROM CALIFORNIA TO SOUTHEAST ALASKA

## ALASKA'S SALMON HARVESTS, 1878-1993



## 1878-1993 SOUTHEAST ALASKA SALMON CATCHES

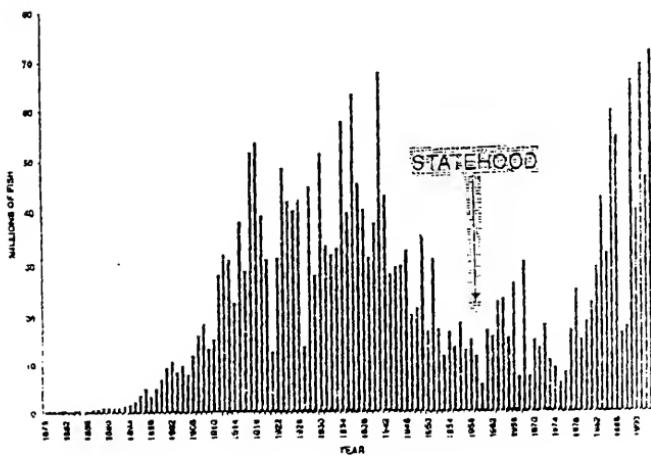


Figure 2. Historical commercial salmon catches in Alaska and the Southeast Alaska region, 1878 to present.



## Northwest Indian Fisheries Commission

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**Testimony of Gerald I. James, Tribal Commissioner**  
U.S. Section of Pacific Salmon Commission

to the

U.S. House of Representatives  
Committee on Merchant Marine and Fisheries  
Subcommittees on Fisheries Management and Environment and Natural Resources

August 2, 1994

Introduction

Good afternoon Mr. Chairman and members of the Committee. I am Gerald James, a member of the Lummi Indian Nation, and one of the three voting Commissioners on the U.S. side of the Pacific Salmon Commission. In that capacity, I represent twenty four sovereign treaty Indian tribes located in Washington, Oregon, and Idaho. On their behalf, let me express our appreciation to you for this opportunity to address the Committee.

The treaty tribes in the Pacific Northwest have a special role in the fishery and in fisheries management. This role stems from our treaties with the U.S. government. In these treaties, which repeatedly have been interpreted and upheld by the highest courts in the land, the tribes granted vast areas of land in the Pacific Northwest to the United States, but reserved forever their rights to fish in their usual and accustomed areas. For those of you not lucky enough to be from the Pacific Northwest or familiar with fisheries management in that part of the world, let me sum up our role by saying that you cannot talk about fisheries policy in the Northwest unless you are talking also to the tribes. As governments and co-managers of the resource, we must be involved in all facets of fisheries management in the Pacific Northwest.

The scope of the salmon problem and its solution

Before I address the specific questions you presented to me in your invitation to this hearing, let me first point out that there are many reasons the salmon are in so much trouble today. As many of you are learning, a lot needs to be done to fix the problems. Not surprisingly, the "fixes" must be related to the causes. In particular, we have serious habitat problems, caused by hydroelectric development, urban growth, forestry practices, run-off, pollution, and water withdrawals, to name a few. It is unrealistic and unfair to try to address the symptom of these problems -- the decline of the salmon -- with harvest management alone. That approach will fail. The tribes stand ready to contribute to solving all these problems, but we will not allow our fisheries and our cultures to be sacrificed as a substitute to addressing the real causes of the salmon dilemma.

A comprehensive, long-term approach is absolutely essential to get us out of the mess we are in. Together with our co-managers from state resource agencies, we are working on just such an approach. Specifically, we are developing a comprehensive framework, which we call "For the Sake of the Salmon," that we will be discussing with many of you and other public officials here and in the region over the next several days and weeks, to solicit advice and support. While I do not want in any way to diminish the importance of today's topic --

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improving implementation of the Pacific Salmon Treaty -- I do want to impress upon you that this is but one piece of a much larger effort to save the salmon.

#### The need for bilateral cooperation

Let me now get to the specific issue at hand. The need for the Pacific Salmon Treaty stems from one simple fact: the salmon respect no boundaries. That was true in 1985 when the treaty was signed, and it is true today. For this simple reason, management of the salmon requires inter-jurisdictional cooperation. We cannot hope to manage these stocks for optimum production if the various parties that affect them are working at cross purposes. We can debate the specifics of how that cooperation should occur, but there can be no question about the necessity of it. In summary, the answer to your first question is "no" -- unilateral fisheries management of salmon will not work, at least not for very long.

#### Tribal goals for the Pacific Salmon Treaty: a progress report

In 1985, the tribes' primary goal for this treaty -- which exists largely as a result of the focussed and sustained efforts of the tribes and their regional co-managers -- was to rebuild depressed stocks and sustain production at optimum levels to support the fisheries upon which our way of life depends. That still is our primary goal. Unfortunately, progress in this regard has been much slower than we envisioned. In some cases, there has been no progress at all; in a few cases, they actually have gotten worse. This has been the biggest disappointment of all.

Another goal of the tribes was to further the process of institutionalizing our involvement in fisheries management and fisheries policy. Our historical experience with having others make decisions on our behalf has reinforced the necessity of looking out for ourselves. This means direct, substantive tribal involvement is essential, and we will continue to insist upon it. In the Pacific Salmon Commission forum, we have been reasonably successful in accomplishing this goal. We are represented and actively participate at all levels of the Commission structure, both policy and technical. It is because of our historical experiences of being shut out of decision making that we will be very cautious about relinquishing any control over this process.

Yet another goal was to improve the science of fisheries management, and how it is utilized in resource decision making. Our results, to date, have been mixed. While we have made great strides in the technical arena -- which is one of the often overlooked positive results of this treaty -- we do not do a very good job of using this improved information to make decisions. This is a failure at the top of the organization, a failure demonstrated most clearly by the decision gridlock at the policy level.

#### Obstacles to achieving U.S. positions

This leads me to your question about obstacles to achieving a unified position. We fail to reach a unified position because we have conflicting interests and disagree on the specific meaning of some rather fundamental elements of the Treaty. The most serious substantive element is the principle of equity - the international allocation standard of the Treaty. While none of us on the United States side buys into the Canadian view, we have been unable to move forward on this issue in the United States Section because of our inability to resolve our conflicting internal views.

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That we would disagree on important issues in the United States Section was anticipated in 1985. What was unanticipated was the gridlock that would result from our lack of a mechanism to resolve our disagreements. We did not foresee our enormous capacity to sustain debates over these issues, debates that lead to no resolution. In short, the requirement for total consensus among the three voting U.S. Commissioners has turned out to be the recipe for avoiding decisions, rather than a mechanism for forcing consensus.

What I find particularly ironic about this situation is that we -- the tribes and the states -- created this system quite intentionally. Each of us was so concerned about being out-voted by the others that we wrote the consensus standard into the Treaty Act. And, because of our respective experiences with the federal government, we insisted upon retaining local control over the decisions. That is why the Federal Commissioner was given no vote. We knew that the consensus requirement would be a tough standard, and that it would take a great deal of effort and a willingness to compromise. What we failed to adequately foresee was the extent of the gridlock that would result. And, quite frankly, some of us did not foresee how much that gridlock would serve to preserve the status quo, a status quo which increasingly is more harmful to some of us than to others.

As I mentioned earlier, the tribes have good reasons to be very skeptical about surrendering any of their control over decisions that so greatly affect them. However, we also recognize that there is no value in protecting our standing in a salmon management process which stands by and allows the salmon to disappear. It saddens us deeply to watch this precious and unique resource, which our people have nurtured and honored for thousands of years, disappear in a few short decades. Something has to be done, now.

#### Specific recommendations to improve decision making and the federal role

The good news is that the Treaty itself is basically sound. Even the Pacific Salmon Treaty Act, our U.S. implementing legislation, is basically sound. "If it ain't broke, don't fix it" applies to most of the Act, with one small exception: there needs to be a way to force decisions within the U.S. Section. Toward that end, I am providing you with a proposed amendment to the Pacific Salmon Treaty Act of 1985 (16 USC 3631). This proposal is quite simple, and preserves the opportunity of the tribes and states to reach consensus. However, in the event they fail to reach a decision, the federal Commissioner would have to propose a position to the three voting U.S. Commissioners. This federal proposal, which would have to respect both the international and domestic obligations of the United States, could be modified by the state and tribal Commissioners only to the extent the three of them can reach agreement to do so. This amendment would result in something happening that many of us thought would occur with the existing system: the federal Commissioner would take on an influential role in facilitating decisions. This is the most important role the federal government can play in the United States Section's deliberative processes, and stands in sharp contrast to the wholly unacceptable alternative of allowing the federal government to unilaterally negotiate on our behalf.

We believe this simple proposal is all that must be done to end the decision gridlock. However, I want to reiterate an earlier point I made: restoring the salmon resource will require much more than improving the function of the Pacific Salmon Treaty. This amendment is, however, an important and very good start.

Thank you.

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**Proposed Amendment of the  
Pacific Salmon Treaty Act of 1985 (16 USC 3631)  
to Improve Decision Making Capability of the United States Section**

*Current provision, Section 3(g):*

(g) VOTING REQUIREMENTS.—The United States Section shall operate with the objective of attaining consensus decisions in the development and exercise of its single vote within the Commission. A decision of the United States Section shall be taken when there is no dissenting vote.

*Proposed amended provision:*

(g) VOTING REQUIREMENTS.—The United States Section shall strive to attain consensus in the formulation of positions and in reaching decisions in the development and exercise of its single vote within the Commission. A decision of the United States Section shall be taken or a position adopted when there is no dissenting vote. In the event the voting members of the United States Section fail to reach consensus in a timely manner and the federal United States Commissioner deems it necessary for the United States Section to reach a decision to meet its international obligations under the Treaty or to adopt a position to further the deliberations of the Pacific Salmon Commission according to appropriate schedules, the following procedures shall apply:

- (1) The federal Commissioner shall notify each of the voting United States Commissioners in writing of the need for a position or decision by the United States Section, and the time by which the position or decision is required.
- (2) Prior to the time when the position or decision is required, the federal Commissioner shall present a proposed position or decision to the United States Section. The position or decision proposed by the federal Commissioner shall be consistent with applicable federal statutes and United States trust responsibilities and obligations to United States treaty Indian tribes.
- (3) The position or decision proposed by the federal Commissioner may be modified by the three voting United States Commissioners only to the extent they unanimously agree, or by the federal United States Commissioner who, after having considered the deliberations of the United States Section, deems it appropriate to modify the original proposal or decision to better reflect those deliberations.
- (4) A decision of the United States Section shall be taken, or a position to be advocated by the United States Section reached, when the time period identified in subsection (g)(1) has expired or when the three voting Commissioners have reached unanimous agreement on the federal Commissioner's proposal or a specific alternative.

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## Testimony of Robert Turner, Commissioner

**U.S. House of Representatives**  
**Committee on Merchant Marine and Fisheries**  
**Subcommittee on Fisheries Management**  
**Subcommittee on Environment and Natural Resources**

*Pacific Salmon Treaty Hearing*  
*August 2, 1994*

Thank you for the opportunity to address the status of our salmon resources and the performance of the Pacific Salmon Treaty. My name is Robert Turner. I am Director of the Washington Department of Fish and Wildlife and serve on the Pacific Salmon Commission.

The timing of this hearing is critical. The top priority for the state of Washington in the Pacific Salmon Treaty negotiations is to address conservation concerns for our stocks of chinook and coho. In recent years Washington chinook and coho fisheries have been severely restricted in response to the conservation needs of a wide range of stocks. Canadian fisheries, primarily those off of the west coast of Vancouver Island, harvest the largest portion of the harvest of many, if not all, of these same stocks.

Conservation of these stocks has become a national issue. Snake River chinook stocks recently listed under the Endangered Species Act are impacted by fisheries in both countries. Coho stocks originating throughout the Pacific Northwest are currently under consideration for listing by the National Marine Fisheries Service. Rebuilding and protecting these runs will require actions to protect and improve the fish throughout their life cycles. Fisheries management is only one of the areas that we need to address to ensure that this basic natural resource is sustained for the long term.

Chinook and coho issues have been at the top of our negotiating agenda since the treaty was signed. Other issues, primarily stemming from Canadian concerns about relative interception levels, have prevented the two countries from making significant progress on improved chinook and coho management regimes. I have provided briefing summaries to the Washington Congressional delegation describing our negotiating objectives during the last two Treaty cycles (attached).

To date, we have had little success in getting Canada to implement more responsive management measures to address these basic concerns. What is needed is a viable negotiating strategy that recognizes the objectives of both countries.

Lack of progress on these basic issues has contributed to the failure to pursue opportunities to increase production to the benefit of interests in both countries.

We have an opportunity to move forward, building upon the government-to-government discussions this summer. We must aggressively pursue that opportunity through a clear commitment at both the federal and regional levels.

We believe that instituting the Pacific Salmon Treaty was fundamental to the long-term success of our efforts to rebuild and enhance salmon resources in the Pacific Northwest. After almost ten years of experience under the Treaty, we believe that it is time for a renewal of the original commitments and for fundamental changes to ensure the potential in the Treaty is realized by both countries. Our problem is not with the concepts embodied in the Treaty. It is with the failure to follow through on the initiatives embodied in the original Treaty and its annexes.

Pacific salmon generally migrate northward upon entering the ocean. As a result, salmon runs from Washington, particularly stocks of coho and chinook, are intercepted in fisheries off of British Columbia and runs from British Columbia are taken in mixed stock fisheries off of Southeast Alaska. Canadian fisheries take relatively few fish originating in Alaska. This basic pattern puts Washington at a geographic disadvantage.

A basic Canadian strategy up to and after agreement on the treaty has been to use its fisheries off of the west coast of Vancouver Island as the principal avenue to address its concerns about interception levels in the Fraser River sockeye fishery and in southeast Alaska. It became apparent that each country was capable of frustrating the conservation goals of the other, and that neither country could manage its fisheries without the cooperation of the other.

A number of factors led to the signing of the treaty in 1985. There was clear recognition by the parties of the need for coordinated management given the migratory patterns of stocks from both countries and the traditional fisheries that have developed on the resulting mixtures of stocks. There were more specific concerns as well, principal among them being the mutual recognition that chinook stocks from both countries were declining and in need of coordinated management action.

The U.S. also raised concerns regarding the escalation of coho catches in southern Canadian fisheries at the same time southern U.S. fisheries were increasingly restricted in order to meet basic conservation concerns. Tagging data indicated that these southern Canadian fisheries had significant impacts on U.S. stocks.

Long-standing commercial fisheries have developed in both countries dependent upon the Fraser River runs of sockeye and pink salmon. Both countries were looking for improvements to the management regime then in place under the International Pacific

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Salmon Commission. In the north, both countries had a need for improved coordination of southeast Alaskan and northern British Columbia mixed-stock fisheries.

The rationale for and the promise of the Pacific Salmon Treaty was clearly stated by Secretary of State Schultz in the letter transmitting the 1985 agreement to the President:

*.....Pacific salmon is one of the most valued resources of the Northwest, prized by fishermen of both countries. Effective salmon management requires international cooperation. Conservation of salmon resources requires coordination among all management regimes which affect stocks throughout their migratory range. Both Parties must share responsibility for the development and preservation of the salmon stocks, which often are subject to harvest by fishermen of both Parties as these stocks migrate between the ocean and freshwater spawning grounds.....This treaty, the culmination of these long negotiations, provides a workable means to manage, conserve and rebuild the resource.*

The treaty signed in 1985 contained general principles agreed to by the parties, established the Commission and provided guidance as to its operation and established initial management objectives and guidelines. Secretary of State Schultz described these principles as follows:

*Two main principles govern the treaty. As set out in Article III(1), they are first, to "prevent overfishing and provide for optimum production," and second, to "provide for each Party to receive benefits equivalent to the production of salmon originating in its waters." This second principle, the so-called equity principle, is intended to provide for each Party to receive compensation benefits of unspecified form or quantity for fish harvested by the other Party. This will be no simple task. We anticipate that this calculation will consider, among other factors, numbers of fish that are intercepted, their size and growth potential, and their value. To the extent that the Commission is able to ascertain that the levels of interception by each Party are not equivalent, it would be expected that within the Commission the Parties would develop a phased program to adjust and compensate for the inequity.*

Both Parties came out of the treaty discussions in 1985 with significant expectations that long-standing problems and issues would be dealt with constructively through the Commission. An ambitious annual meeting cycle was initiated, designed to deal with both short-term and long-term aspects of salmon management.

Many of the measures called for in the 1985 treaty annexes were intended as initial steps. The chinook rebuilding regime is a prime example. Specific management measures, for example the ceilings on mixed stock fisheries, recommended in the annex to the 1985 treaty were based upon very limited information. It was our expectation that as additional information became available, the regime would be quickly improved in

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response. Provisions for coho management, including the ceiling on west coast of Vancouver Island catches, were also considered as initial steps toward a more responsive, conservation based regime.

With the basic approaches to Fraser River management in place for the first eight years, the focus of southern U.S. efforts was on following through on the development and implementation of the chinook rebuilding program and on establishing improved coho management regimes.

Early on, our efforts to make progress on improved coho and chinook management regimes ran into three major roadblocks. We have made slow but significant progress on two of those hurdles to progress - differences in opinion on the need for basic conservation measures to protect and rebuild stocks and the lack of agreed-upon information on the distribution of fish stocks in various mixed stock fisheries. The third hurdle turned out to be the biggest of all; the lack of an agreed-upon mechanism for assessing equity status.

It rapidly became clear following the implementation of the treaty that Canada still considered its coho and chinook fisheries on southern U.S. stocks as essential to maintaining its equity position and as a basic leverage point on U.S. fisheries taking Canadian stocks off of Southeast Alaska. Canada consistently responded to southern U.S. initiatives to improve the responsiveness of west coast Vancouver Island fishing regimes by raising its need for coastwide consistency or by citing concerns for what they viewed as an eroding equity situation.

The lack of progress on the coastwide chinook rebuilding initiative, a major element in the 1985 treaty, is especially disappointing. The 1985 treaty established a basic approach to the management of fisheries in response to the Parties' stated objective of rebuilding natural chinook stocks by 1998. The fisheries management approach included ceilings on southeast Alaskan and Canadian marine mixed stock fisheries and provisions limiting the harvest impacts in other areas.

Annex IV of the Treaty established a bilateral Chinook Technical Committee charged with the task of monitoring progress toward rebuilding objectives. Beginning in 1986, the Chinook Technical Committee has issued an annual review of coastwide chinook rebuilding status. From the onset, the Committee expressed concerns about the impact of increased incidental mortalities on rebuilding and recommended steps be taken to address this problem. In 1987, the bilateral Technical Committee recommended reductions in exploitation rates in order to begin rebuilding of lower Georgia Strait and west coast of Vancouver Island chinook stocks.

Very little action was taken to respond to these concerns. The Technical Committee recommendations have been basically repeated each year since, with stocks being added

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to the list in danger of not meeting the rebuilding objective. The basic cause has been a lack of consensus, both at the domestic and bilateral levels, on the circumstances under which ceilings could be altered.

Lack of a common perspective on the interpretation of key policy elements, such as a clear definition of rebuilding, has also been a major stumbling block.

Washington representatives, in cooperation with Oregon and tribal counterparts, committed a great deal of time and creative energy towards establishing guidelines for changes to the fishing regimes under the treaty. Our underlying objective has been to meet the rebuilding program. Since early in the process we have supported efforts to develop an index approach to the management of the major mixed-stock fisheries currently managed under ceilings. Our approach is based on a relatively simple premise: the harvest rate in such a fishery should be decreased if abundance decreases to the extent the rebuilding objectives are threatened, and it could go up if abundance increases so long as rebuilding objectives are not compromised.

Differences of view between Alaskan and Southern U.S. contingents on these issues have hampered progress. In some years, the U.S. has failed to provide Canada with opening negotiating positions on chinook until very late in the annual cycle, effectively preventing meaningful negotiations with Canada. A consensus of the southern U.S., tribal and Alaskan commissioners is required by the rules established in the Pacific Salmon Treaty Act of 1985 (Public Law 99-15).

In 1993, the State Department notified the U.S. Section of the Commission that given the lack of progress on chinook the U.S. was in jeopardy of not fulfilling its international obligations under the United States-Canada Pacific Salmon Treaty. Coming up with the means to break potential impasse within the U.S. Section of the Commission is one of the improvements necessary for progress.

The equity issue has been a major obstacle in the chinook discussions. The majority of stocks requiring reductions in exploitation rate in order to rebuild are taken in Canadian fisheries off of the west coast of Vancouver Island and in Georgia Strait. Reductions in these fisheries means reduced harvest of U.S. chinook stocks. Canada has insisted that the equity implications be directly addressed as part of any proposal to make management changes in response to conservation concerns.

The Canadian view that they were at a disadvantage in terms of interceptions was bolstered by increasing catches of Canadian sockeye caught incidentally in Alaskan pink fisheries off of Noyes Island. Those increased catches corresponded to major increases in the run strengths of both the pink and sockeye runs. In recent years, poor survivals of U.S. chinook stocks contributing to the west coast of Vancouver Island have further intensified the Canadian perspective that they are becoming increasingly disadvantaged.

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For the first five-six years following the treaty, the U.S attempted to reach agreements with Canada by appealing to a basic conservation ethic. Both countries depend upon each others' salmon production, therefore we have a mutual interest in protecting and sustaining that production at the highest level possible.

The Canadian response has been consistent. It is the Canadian view that this approach does not address the second basic principle of the treaty -- that each country should receive benefits equivalent to the production of salmon from its waters. To Canada the U.S. approach would result in reduced interceptions of U.S. stocks while maintaining or increasing U.S. interceptions of Canadian stocks. The potential for future benefits to both countries in the future as a result of short-term actions is viewed skeptically by Canada. While Canada has encouraged conservation, it has also stressed its view that it would be desirable for each country to reduce interceptions and to become more dependent upon its own production.

The two countries have made some progress with respect to equity. Many of the basic differences in estimated interceptions have been reconciled. The two countries have exchanged views with respect to equity through plenary sessions and have conducted a workshop to discuss methods and data required for estimating benefits. Both countries have tabled basic frameworks for evaluating equity status.

During the 1992/93 negotiating cycle, it became apparent that differences within the U.S. Section were a major roadblock to progress. The southern area contingent supported the so-called two track process - dealing with equity at a government-to-government level in parallel to Commission efforts to address long-term conservation objectives. We had hoped that this strategy would clear the way for meaningful progress on conservation issues. We were prepared to cooperate with federal efforts to address equity issues.

The U.S. made a special effort to overcome domestic differences and table a comprehensive position on conservation issues early in the 1993/94 negotiating cycle. Canada did not respond, citing its perception of a lack of progress in the government-to-government discussions regarding equity. Our view of the situation was made quite clear via a joint letter sent by Governor Mike Lowry, Governor Barbara Roberts, Bill Frank Jr and Eugene Green Sr. (attached).

*We support the President's call to move forward on strategies to rebuild salmon stocks to optimum production through better harvest management and coast-wide habitat protection and restoration. The Treaty was intended to provide the vehicle for this progress. However, it has been clear for several years that progress on the equity issue is critical to the success of the Treaty. Absent such progress, Canada simply will not cooperate fully in rebuilding depressed Pacific salmon stocks.*

Robert Turner

*We disagree strongly with many aspects of Canada's position on equity. Nevertheless, we are not convinced that the State Department has done all it can to explore reasonable options with the Canadians that could break the impasse. Our representatives to the U.S. Section of the Pacific Salmon Commission remain prepared to pursue such options.*

We believe that the U.S. should aggressively pursue development of the concept it has put forward in the government-to-government discussions. Moving forward on this issue will take strong, consistent federal leadership and involvement. We believe that there are serious flaws in the Canadian approach to quantifying equity status. To date, the U.S. has not succeeded in convincing Canada of those flaws. We need to counter the Canadian perspective with a clear and objective alternative, with specific timelines for completion and implementation.

The status quo is not acceptable from our perspective. Measures to improve survival of depressed Northwest salmon runs have had significant impacts on communities throughout the Pacific Northwest. Long-standing fisheries have been closed or dramatically reduced in recent years. Major investments have been made to improve survival of stocks originating in the Snake River and upper Columbia, additional measures will be necessary to achieve our goal of healthy and sustained fisheries.

The price for not solving the equity issue is Canada's continued recalcitrance at taking part in the conservation of southern chinook and coho stocks. We urge you to actively support efforts to improve the treaty process.

Our basic objective remains improved chinook and coho management regimes. Improvements are necessary in both mixed-stock and single-stock fisheries. We believe that the foundation and framework for those approaches has been established. What is needed is the full commitment of the U.S. and Canadian negotiators to further develop and implement these efforts. An effective approach to the equity issue should enable Canada to fully participate in those efforts.

In the short-term, we are seeking significant reductions in Canadian harvest of U.S. stocks, particularly off of the west coast of Vancouver Island. We realize that Canada will expect measures to address their own concerns as part of an overall agreement. We are prepared to consider the full range of compensating measures envisioned when the treaty was signed, including adjustments in U.S. fisheries, increased enhancement and more flexible sharing arrangements when abundance is high. In communications with Vice President Gore during the recent government-to-government talks, Governor Lowry has clearly stated our willingness to contribute to solutions (attached letter).

In addition to more effective federal leadership and presence in the government-to-

Robert Turner

government equity discussions, changes are necessary to prevent gridlock within the Commission. Currently, the federal commissioner has no vote within the U.S. Section of the Commission. We support an increased federal role in the commission process. A possible approach has been developed that appears to have considerable merit (attached). This amendment would set a time certain for development of U.S. negotiating positions. If the U.S. Section failed to reach consensus, the federal commissioner would be responsible for tabling a proposed position. If that position is not replaced by consensus of the state and tribal commissioners within a set period of time, it would go forward as the U.S. position.

We believe that it is time for federal, state and tribal governments to join together in a coordinated strategy to protect and restore Pacific salmon production in the Pacific Northwest. Canada has often expressed skepticism regarding the long-term commitment of the U.S. to the production of salmon. We need to make that commitment clear. We are prepared to share our ideas with you. There are opportunities for action. Part of that strategy must address the problems preventing our realizing the full potential of the Pacific Salmon Treaty.

Robert Turner

**List of Attachments**

Memorandum. September 8, 1992. Robert Turner to Washington State Congressional Delegation. Subject: U.S.-Canada Salmon Negotiations.

Memorandum. March 21, 1994. Robert Turner to Washington Congressional Delegation. Subject: Pacific Salmon Treaty Negotiations - 1993/94 Cycle.

Letter. February 9, 1993. Governor Mike Lowry to the Honorable Tom Foley, Speaker of the House.

Letter. March 24, 1993. Northwest Delegation Members to Secretary of State Warren Christopher.

Letter. July 14, 1993. Elinor G. Constable (Department of State) to U.S. Pacific Salmon Treaty Commissioners.

Letter. June 21, 1994. Governor Mike Lowry to the Honorable Bill Clinton, President of the United States.

Letter. July 1, 1994. Governor Mike Lowry to the Honorable Albert Gore, Vice-President of the United States.

Proposed Amendment of the Pacific Salmon Treaty Act of 1985 (16 USC 3631) to Improve Decision Making Capability of the United States Section.

ROBERT TURNER  
Acting Director



STATE OF WASHINGTON

DEPARTMENT OF FISHERIES

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September 8, 1992

MEMORANDUM

TO: Washington State Congressional Delegation  
FROM: Robert Turner  
SUBJECT: U.S. - Canada Salmon Negotiations

Thank you for the opportunity on August 11 to brief you and your staffs on the current status of Washington's efforts to develop objectives in upcoming negotiations on the U.S.-Canada Pacific Salmon Treaty. As promised, this memo summarizes the presentation and is intended to be helpful to you in responding to constituent concerns.

The State's primary objective in the upcoming negotiations is to reduce Canadian interceptions of Washington chinook and coho, particularly in years of low abundance. We have established this objective because of the unacceptable constraints we must now place on our chinook and coho fisheries in order to meet our conservation requirements.

The status quo is not acceptable.

The discussion below explains the need to reduce coho and chinook interceptions and describes the relevant background of the fisheries and the Treaty.

As I mentioned on August 11, I request your appreciation of the concern for chinook and coho and your support of the State's effort to address the problems.

THE EQUITY PRINCIPLE

The treaty signed with Canada in 1985 contains a guiding principle that each country should receive benefits equivalent to its production of salmon. While compliance with other treaty principles provides exceptions, this "equity" principle requires that each country gain as much from its interceptions as it loses as a result of the other country's interceptions. If an "equity" balance exists and the U.S. wants to reduce Canadian interceptions, the U.S. must reduce its interceptions of Canadian

Washington State Congressional Delegation  
September 8, 1992

fish or provide equivalent benefits through enhancement or other means.

Canada's strategy up to and after conclusion of the treaty has been to exact payment for U.S. interceptions through its fisheries off the west coast of Vancouver Island (WCVI). The overwhelming majority of coho and chinook salmon in WCVI fisheries are coho from Washington and chinook from Washington, Oregon and Idaho. From Canada's point of view, it makes no difference if the United States' harvest of Canadian fish takes place in Washington or Alaska, that harvest is paid for with interceptions in Canada's WCVI fisheries.

Pacific salmon migrate widely and intermingle throughout the north Pacific Ocean. As a result, fishing fleets from one country inevitably intercept salmon originating in the other.

There are major intercepting fisheries in both countries. Fisheries in Alaska harvest chinook stocks from Washington, Oregon and Idaho. Alaskan fisheries also intercept coho, chinook, chum, sockeye and pink salmon from British Columbia. Canadian fisheries harvest chinook and coho from Washington but harvest few Alaskan stocks.

The northward migration of chinook and coho places Washington at a geographic disadvantage. While the 1985 Treaty limited Alaskan and Canadian interceptions of Washington stocks, continued substantial northern harvest of our stocks requires Washington to severely constrain its chinook and coho fisheries. Washington's only major intercepting fishery is the commercial harvest of sockeye and pink salmon returning to Canada's Fraser River.

The Pacific Salmon Treaty was intended to balance overall interceptions, Canadian and U.S., including those off of both Washington and Alaska. The Treaty has one root in a 1930s Convention between the U.S. and Canada. The Convention was established to provide for coordinated management of Fraser River sockeye and provided that Washington commercial fishers harvest 50 percent of the sockeye in waters adjacent to the Fraser River. By the 1980s, the view that this arrangement was unfair became predominant in Canada. Canada began implementing a strategy to reduce the U.S. 50 percent share of sockeye and began increasing its interceptions of U.S. origin salmon. In particular, Canada encouraged fisheries on U.S. coho and chinook off the WCVI.

Several Pacific Northwest chinook stocks declined dramatically.

Washington State Congressional Delegation  
September 8, 1992

It became apparent that with the inclusion of Alaska harvest, each country could mount fisheries capable of frustrating the conservation goals of the other, and that neither country could manage its fisheries without the cooperation of the other. To halt the increase in Canadian interceptions, the United States agreed to a treaty that acknowledged that each country should receive benefits equivalent to production of salmon in its waters. In accepting this principle, the United States acknowledged that its interceptions of Canadian Fraser River stocks were linked to interceptions of U.S. stocks by Canada.

#### THE CONSERVATION CRISIS

In recent years Washington chinook and coho fisheries have become unacceptably restricted because of the conservation needs of the stocks. Under the current Treaty provisions, Canadian WCVI harvest of Washington coho and chinook is unresponsive to the conservation needs of these stocks.

The listing of Snake River fall chinook stocks as threatened under the Endangered Species Act resulted in drastic reductions of Washington ocean and in-river harvest of chinook in 1992. Under the Treaty, Canada is entitled to harvest 263,000 chinook annually in north-central B.C. and 360,000 chinook annually off the WCVI, regardless of the conservation status of U.S. stocks. In fact, U.S. stocks account for over 80 percent of the WCVI chinook harvest. It is estimated by the National Marine Fisheries Service that in 1992 over 70 percent of all the harvest of listed Snake River fall chinook stocks could occur off the WCVI.

As a result of the listing of Snake River stocks, irrigators in eastern Washington, barge companies and power-dependent industries are spending millions to protect the very stocks that are being harvested in Canada.

Coho fisheries also are unacceptably constrained. Washington's recreational fishing regulations for 1992 are among the most restrictive in years. For example, Washington's ocean fishery, which needs 500,000 to 600,000 coho for a full summer recreational fishery, had only 160,000 coho available this year. In an unprecedented measure, most of the Strait of Juan de Fuca closed August 23 and the remainder will be closed entirely during September and October to protect the weak Hood Canal coho run.

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While Washington fisheries face these constraints, Canada continues to harvest 1.8 million coho annually off the WCVI, regardless of conservation needs. Over 60 percent of the coho harvested in WCVI fisheries are of U.S. origin. In the case of the depressed Hood Canal coho, which are being protected by the closure of Washington fisheries, over 52 percent of the entire run is harvested in Canada.

Chinook

The need to conserve chinook stocks was in 1985 one of the primary forces behind the Pacific Salmon Treaty. In an effort to get U.S. negotiators to the bargaining table, Canada deliberately encouraged fishing effort on U.S. origin chinook, particularly off the WCVI. The message was clear: Canada viewed its harvest of Washington chinook stocks as a balance to Alaskan interceptions of the whole range of Canadian stocks and to Washington interceptions of Fraser River sockeye and pink stocks.

The resulting high harvest in Alaska and Canada, combined with lower survival generally, contributed to severe chinook declines. A primary aim of the Treaty was to rebuild these natural chinook runs. The Treaty included harvest ceilings on chinook fisheries in southeast Alaska, northern British Columbia and off the WCVI. These ceilings were designed to reduce harvest rates to allow rebuilding of key natural runs by 1998.

When the chinook ceilings were established in 1985, Canada did not have a significant recreational fishery off the WCVI. With Canadian assurances that this fishery was unlikely to grow, U.S. negotiators agreed not to put ceilings on Canada's recreational harvest. Since 1985, however, this fishery has grown dramatically. The WCVI sport harvest may exceed 100,000 additional chinook annually. Ironically, the majority of recreational fishers in British Columbia are likely from the United States. These recreationalists are flocking to Canada to catch the same fish they cannot catch in Washington because the conservation constraints imposed in Washington have no effect on the fishery in British Columbia.

Today some chinook stocks have rebuilt to target levels, while others are not on schedule for rebuilding by 1998. Some stocks have declined to below pre-Treaty levels. Most dramatically, Snake River fall chinook have been listed under the Endangered

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Species Act. As a result, Washington has continued to severely limit both commercial and recreational chinook harvests. The expiration of the Treaty's chinook provisions offers an opportunity to ensure that Canadian fisheries share the conservation burden borne only by U.S. fisheries under the present regime.

Coho

Canada's shift of fisheries to the WCVI had a dramatic impact on coho stocks as well. An important component of the Treaty was the 1.8 million ceiling on WCVI coho harvests. Pacific Salmon Commission's bilateral Coho Technical Committee estimates are that over 60 percent of WCVI coho harvest is of Washington stocks. As with chinook stocks, the Treaty does not limit the WCVI recreational harvest, nor is it measured by Canada. Indirect estimates indicate it may have grown to as much as 300,000 coho above the commercial harvest of 1.8 million.

Canada does not currently share the conservation burden. Canada harvests its full 1.8 million annual allocation and the additional recreational share without regard to stock abundance or stock composition. U.S. fisheries remain restricted to protect key stocks.

The 1985 Treaty halted the increase in Canadian commercial coho harvests by placing a ceiling of 1.8 million. Yet it is clear that some coho stocks in Washington have continued to decline. We will not be able to correct this decline and remove the unacceptable constraints on Washington coho fisheries unless we can reduce Canadian interceptions in years of low coho abundance.

It is undeniable that Canadian fisheries are key to Washington coho conservation. Over half of the harvest of all north Puget Sound coho occurs in British Columbia. Skagit and Stillaguamish coho runs have needed special protection in three of the last six years. The fact that half of the harvest of coho takes place in Canada prior to the effects of any U.S. conservation efforts has led to massive and painful management of Washington fisheries.

The 1992-93 negotiations offer an opportunity for the two countries to explore abundance-based management of southern coho stocks. This approach would ease the complex and restrictive management U.S. fisheries have faced off the Washington and Oregon coasts and in Puget Sound. Canadian participation in such

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an approach could allow for expanded Canadian harvests in high coho abundance years and restricted harvests when stocks need protection.

Canada views its current WCVI harvests as necessary for "equity." Canada can be expected to seek concessions from the United States in return for any reductions in Canadian harvests, even though reductions may be necessary for conservation.

#### FRASER RIVER SOCKEYE

Some tribal and non-tribal commercial sockeye harvesters have announced various objectives to increase Washington's commercial harvest of Canadian Fraser River sockeye. While the state understands these desires, the state is unwilling to embrace a sockeye objective until it is clear how such an objective would fit with the primary goal of reducing Canadian coho and chinook harvests. The following questions must be answered:

1. Increased harvest of Fraser River sockeye in Washington risks additional incidental harvest of Washington coho during the sockeye harvest. How can this be prevented?
2. Canada will expect an equity "payment" in exchange for an increased interception of Canadian fish. How will we make this payment in light of our knowledge that Canada will seek payment on the WCVI and in coho?
3. If we pay for increased Fraser River sockeye with bargaining chips other than coho, what will we have left with which to bargain with Canada for the primary objective of reduced chinook and coho harvests?

Commercial fisheries in Washington's Strait of Juan de Fuca and San Juan Islands target sockeye and pink salmon bound for Canada's Fraser River. As described above, a 1930 convention with Canada provided that Washington commercial fishers harvest 50 percent of the sockeye in waters under its control.

Canadian unhappiness with U.S. harvest of Fraser sockeye led to increased Canadian harvest of U.S. chinook and coho and ultimately to the 1985 Pacific Salmon Treaty. The Treaty included an eight-year Fraser sockeye and pink salmon agreement with two four-year components. In the first four years, the

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United States was to receive a percentage of the Fraser sockeye and pink salmon harvest. Based on run size projections, the United States was expected to catch 7 million sockeye and 7.2 million pink salmon. During this period catch levels were developed for each year. These levels could be reduced if the run size were smaller than expected.

In the second component, the United States agreed to cap the overall harvest at 7 million sockeye and 7.2 million pink salmon with some provision to keep harvest below certain levels if runs came back significantly below predictions. The goal was to provide predictable harvests for the U.S. fleet. The agreement also provided the U.S. fleet with absolute numbers of fish above what it had been catching each year prior to the Treaty.

From Canada's perspective, the eight-year arrangement provided the incentive to enhance and increase Fraser River runs, since Canada was assured that it would reap the benefits of those efforts.

During the second four-year period, run sizes increased dramatically. This was due to ideal ocean conditions and increased escapement. The result was that as U.S. fishers harvested their fixed allocation they took a lower percentage of the total harvest than had been projected. U.S. fishers also had shorter seasons, as harvest goals were met quickly with the abundant Fraser runs.

The Fraser River sockeye harvest expectations have been disrupted by unexpected harvests of Fraser River sockeye in Alaskan fisheries. In some years, Fraser sockeye are caught in Alaskan fisheries off Noyes Island targeting pink salmon. These harvests were not understood at the time the Treaty was signed and were generally dismissed as being small in number and related to weather phenomena. Fraser sockeye have appeared in Noyes Island fisheries in large numbers in recent years. The cumulative harvest in the 1989-91 seasons exceeded 450,000 fish. Disagreement between the United States and Canada over how to account for these harvests led to a break-down of the Treaty process this year. As a result, the fishery was not cooperatively managed.

#### DEVELOPING A WASHINGTON STRATEGY

Washington's primary objective is a conservation-based objective:

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We are seeking to preserve fish, not fisheries. We are trying to stabilize some drastically disrupted recreational fisheries, but the focus is on conservation. We are also trying to craft a strategy that recognizes the cyclic nature of the fish. As a result, an acceptable coho and chinook regime should be one that responds to the strength of the stocks in any given year.

We are looking at proposals that would link the level of harvest on the WCVI to the abundance of the fish. When abundance is low, there would be a reduction of harvest on the WCVI. The reduction could be automatic or at the unilateral option of the United States, or a combination.

But in the spirit of paying for what you get, the question will be what we must pay for this reduction. A big part of deciding how much we want to reduce the WCVI harvests will be determined by how much we are willing to pay. Washington must therefore develop a strategy to achieve its objective. There is no question that there are linkages between WCVI coho and chinook and Washington sockeye interceptions. These linkages are created by the equity principle of the treaty and by Canada specifically.

RT:DD:wm



State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

Temporary Address: Post Office Box 43135 Olympia, Washington 98504-3135 • (206) 902-2200; TDD (206) 902-2207

March 21, 1994

**MEMORANDUM**

TO: Congressional Delegation  
FROM: Robert Turner *Bob Turner*  
SUBJECT: PACIFIC SALMON TREATY NEGOTIATIONS - 1993/94 CYCLE

This memorandum is intended to provide you a report on the status of negotiations with Canada under the Pacific Salmon Treaty. I hope it may be helpful in responding to inquiries about the talks.

As you know, the Canadians canceled the negotiating session scheduled for January in Portland because of their concern about the lack of progress in the related government-to-government negotiations on the so-called "equity issue" (discussed below).

The February session in Vancouver was convened, but the Canadians again refused to negotiate fishing regimes, insisting on U.S. concessions on equity. Further government-to-government discussions on this key issue have been held and are scheduled. Nevertheless, it is not clear when, or at what level, the 1994 negotiations on fishing regimes will resume.

**WASHINGTON'S NEGOTIATING OBJECTIVES**

*Washington's primary negotiating objectives remain as they were last year -- to address conservation concerns for Washington's stocks of chinook and coho.* While I believe Canada now shares some of our concerns about chinook, I am particularly troubled by the extraordinary level of harvest off the west coast of Vancouver Island (WCVI) of Washington-bound coho.

The current status of our coho stocks -- and the fisheries that depend upon them -- only confirms this critical negotiating objective as our priority. This summer's commercial and recreational fisheries will be dramatically constrained.

The bilateral Coho Stock Composition Workgroup under the Pacific Salmon Commission issued a long-awaited report in February that estimates the average proportion of Washington-bound coho stocks in the Canadian WCVI fishery between 1984 and 1991 to be more than 66% -- reaching as high as 86.5% in 1985 and 76% in 1989! This information further substantiates what we said in 1993 -- the Treaty's original harvest ceiling of 1.8 million coho in this fishery is simply and structurally too high to be sustained.

The region's efforts to rebuild chinook stocks listed under the Endangered Species Act also justifies our objective. Canadian harvests have differential impacts on a wide variety of Washington chinook stocks. Regardless of ESA implications, rebuilding chinook stocks will require continued actions to reduce harvest rates in fisheries north of Washington.

#### WASHINGTON'S NEGOTIATING POLICY

*Last year, for the first time since the Treaty was signed, I emphasized that Washington state would distinguish between "preferred" negotiating strategies and "viable" negotiating strategies developed to achieve our objective. Preferred strategies are those that cost Washington interests nothing. Viable strategies are those that realistically might achieve our objective.*

I continue to strongly believe that we must focus on viable strategies and not waste time and energy developing "preferred" strategies that only will result in the *status quo*.

All viable negotiating strategies will require the U.S. agreement to provisions Canada perceives beneficial in exchange for its concessions.

#### THE CONSERVATION PRINCIPLE

For a number of years, the U.S. has attempted to appeal to a conservation ethic within Canada and the conservation principle within the Treaty. *Our argument has been that because both countries depend on each other's salmon production, we have a mutual interest in protecting and sustaining that production at the highest level possible.* Fisheries should be managed in accordance with the escapement objectives of the stocks contributing to them. We have repeatedly cited our cooperative management of Fraser River sockeye harvest as an example of this ethic.

Canada takes the view that this approach ignores the Treaty's principle of equity -- that each country should receive benefits equivalent to the production of salmon from its waters. While Canadian stocks intercepted by the U.S. have been at relatively high levels in recent years, many U.S. stocks intercepted by Canada are at depressed levels. Under the Canadian view, the practical reality of the U.S. scenario leads to U.S. interceptions in both Alaska and

Washington of abundant Canadian sockeye at relatively high and increasing levels while Canadian interceptions of U.S. stocks of chinook and coho would be restricted and decline.

*Canada's perception is that the balance of interceptions is in favor of the U.S. and becoming more so. The U.S. promise of future benefits from today's conservation has been insufficient to overcome the Canadian perspective.*

We have tried to address this concern by emphasizing programs in Washington and Oregon to improve habitat and increase salmon production. The Canadian view has been to encourage these activities, but to stress the desirability of each country becoming more dependent upon its own production. In the long run, investments in protecting and improving U.S. salmon production are obviously a key. In the short term, reliance on the argument that Canada should reduce impacts now in return for future benefits has the ring of "the check is in the mail."

It is clear that Canada will not agree to, as Canada frequently says, "gratuitous reallocations." While the U.S. does not accept the position, the most-recent Canadian paper on the subject is clear: "Canada recognizes U.S. coho conservation concerns, and is prepared to consider U.S. proposals for a reduction in the WCVI troll catch ceiling. Without a formal equity agreement, any reduction from 1.8 million is contingent on appropriate compensation being provided to Canada in the year of the reduction."

#### THE QUID PRO QUO IN A VIABLE STRATEGY

Whether because of the need for "compensation" or a more general negotiating *quid pro quo*, it is evident that a viable negotiating strategy must address Canadian issues. Broadly, there are four:

1. Equity -- the Treaty principle that each country should receive benefits equivalent to its production of salmon. Canada is seeking immediate progress toward specific mechanisms to evaluate and respond to equity status.
2. Chinook rebuilding - Both parties have committed to the cooperative rebuilding of chinook stocks.
3. Interceptions of Canadian stocks, primarily sockeye and coho in southeast Alaska's purse seine and gillnet fisheries.
4. Interceptions of Canada's Fraser River stocks in Washington's purse seine and gillnet fisheries.

## EQUITY

"Equity" is a provision in the Treaty requiring each country to "receive benefits equivalent to the production of salmon originating in its waters." Canada's internal policies on this issue clearly has created a perception in Canada that it will "win" the equity debate; that is, that the U.S. will "owe" fish to Canada to achieve equity. While the U.S. can demonstrate that this is not the necessary outcome, Canada has made it clear that the equity issue is its primary concern.

*The U.S. "southern" delegation (that representing Washington, Oregon and the Indian tribes) has for some time urged the Commission to proceed with substantive equity discussions. But, because the U.S. Section of the Commission can take action only with the concurrence of all commissioners, little progress on equity occurred through 1993.*

Having recognized that the United States Section would remain "gridlocked" on the equity issue, the State Department decided last summer to negotiate equity on a government-to-government basis. We supported that decision of the State Department as providing a means to break the impasse on equity and move forward at the Commission level on the critical negotiations over fishing regimes.

As a result, we optimistically entered the 1993/94 round of negotiations on a two-track basis: the equity track at the government-to-government level; the fishing-regimes track at the Commission level. Both Canada and the United States made it clear that the tracks had to move in parallel and at a comparable pace.

Representatives of the "southern" section of the U.S. Commission soon became concerned that the State Department was illustrating the same reluctance to meaningfully discuss equity as had the Commission. While representatives of U.S. northern fisheries may disagree, the feared consequence occurred: Canada canceled the Portland round of fishing regime negotiations because of its dissatisfaction with the pace of equity discussions. Formal concern about this outcome and its cause was expressed by Governors Lowry and Roberts and tribal manager representatives Bill Frank, Jr., and Eugene Greene (Attachment 1).

Washington believes there are reasonable and timely steps to ensure progress on equity that have as yet not been pursued by the State Department. Some of these steps are outlined in the letter from southern Commissioners to the State Department (Attachment 2).

Further equity discussions on a government-to-government basis were held March 16. Little substantive progress appears to have been made, although another meeting was scheduled.

It should be noted that, even though equity is a major issue to Canada, it does not consider equity to be a potential *quid pro quo* for Canadian concessions on fishing regimes. Canada

believes equity was a commitment of the original Treaty, not a subsequent desire. Canada's cancellation of the Portland meeting was intended to express this view. Canada consistently indicates its intention to negotiate fishing regimes only if equity proceeds, and to make concessions on fishing regimes only if it is provided an additional *quid pro quo*.

*As a result, a viable negotiating strategy must include progress on the equity issue, but should not include unrealistic expectations about the concessions on fishing regimes to be achieved thereby.*

## CHINOOK REBUILDING

The goal of rebuilding depressed natural chinook stocks originating in both the U.S. and Canada was a primary driving force behind the signing of the Pacific Salmon Treaty in 1985. The Chinook Annex to the Treaty was intended to be the basis of a coastwide chinook rebuilding program. The agreement included ceilings on major mixed-stock chinook fisheries off of Alaska, the northern coast of British Columbia, the west coast of Vancouver Island, and in Georgia Strait. Limits or reduction in impacts in other, more terminal fisheries were called for as well.

Canada has long viewed its harvest of U.S. chinook and coho off British Columbia as its primary opportunity to balance U.S. interceptions of all species in Alaskan fisheries and by Washington commercial fishers of Fraser bound sockeye and pink stocks. Prior to the Treaty, Canada had allowed catch levels in these fisheries to increase over time. The resulting high harvest rates, combined with reduced survivals of chinook stocks, contributed to the declines in natural stock production.

To date, the rebuilding program has achieved only limited success. Some stocks, primarily those with far northerly distributions, have rebuilt or been maintained at target levels. Others, many of which are affected by Canadian fisheries off of the west coast of Vancouver Island and in Georgia Strait, have declined in recent years. In addition, the survival of hatchery stocks have declined as well.

In December of 1993, the U.S. provided Canada with a comprehensive proposal for addressing the chinook rebuilding program. That proposal called for a 5-year management regime with provisions for annual adjustments to adapt to changing stock conditions. The package included processes to increase responsiveness to annual fluctuations or trends in abundance, to develop specific rebuilding plans for certain chronically depressed stocks, to pursue a coordinated coastwide approach to minimizing incidental mortalities and to increase coastwide efforts to optimize production.

As yet, we have not received a formal Canadian reply to the chinook proposals. The lack of a formal response appears due, at least to a large extent, to the Canadian perception that we have not made sufficient progress on the equity issue.

#### SOUTHEAST ALASKA

The Pacific Salmon Treaty includes a provision which states the "desirability in most cases of reducing interceptions." While this is not a hard-and-fast rule, it is often used by Canada to take issue with the purse seine and gillnet fisheries in the northern boundary area between Alaska and British Columbia.

Some 60% of the harvest in Alaska's northern boundary fishery is by Washington-based commercial fishers who travel to Alaska to participate in this fishery.

U.S. interception of Canadian sockeye and coho in southeast Alaska has risen dramatically since the Treaty was signed in 1985. Sockeye interceptions have increased from approximately 400,000 prior to the Treaty to an estimated 1.2 million in 1993. Coho interceptions have increased rapidly from a low of 125,000 in 1988 to more than 800,000 in 1991 (the last year for which data is available).

Even though Canada annually has raised concern about these increasing interceptions, the requirement of consensus by U.S. commissioners has caused little or no substantive discussions about Canada's concern.

Canada, which already believes it will be "owed" fish through resolution of the equity issue, sees the northern boundary fisheries further exacerbating the equity picture.

Alaska responds by indicating that most of these increased interceptions are due to increased production of salmon by Canada -- the "flooding" of Alaska's fishery by Canadian stocks -- and that no action by Alaska is necessary. Canada also expresses conservation concerns for some of the stocks intercepted by Alaska, but has failed to respond to U.S. requests for the specifics of these conservation concerns.

Canada's response to the failure of the U.S. to address its concerns in Alaska directly affects Washington-bound coho stocks on the west coast of Vancouver Island -- the very stocks for which we have a grave conservation concern. If Alaska continues to intercept Canadian stocks, Canada will continue to intercept Washington and Oregon salmon stocks off of the WCVI. In fact, in February, Canada formally linked a proposed reduction of coho harvests between Alaska and WCVI, limiting both to 1.4 million.

The Alaska response was to label the proposal a "non-starter" before the U.S. Section had an opportunity to consider it.

#### FRASER RIVER SOCKEYE

Canadian sockeye and pink salmon returning to the Fraser River system are harvested by U.S. treaty and non-treaty commercial fisheries in the Strait of Juan de Fuca and San Juan Islands. Catches in these fisheries constitute the majority of southern U.S. (Washington and Oregon) interceptions of Canadian runs. There is a long history to the U.S. involvement in fisheries on Fraser sockeye and pink salmon runs, extending back to before the turn of the century. The main area of contention has involved sockeye harvest.

A main driving force behind the Pacific Salmon Treaty for Canada was its desire to cap U.S. harvest of Fraser runs so that Canadian fishers would receive the benefits of Canadian investments in enhancement of the Fraser River.

The Fraser Annex to the Treaty captured agreements between the two countries for two consecutive four year periods ending with 1992. In the first four years, the U.S. harvest was based upon a percentage of the total allowable harvest. In the second four years, the U.S. harvest was capped at 7.0 million sockeye and 7.2 million pink salmon, with provisions to limit harvest if returns came back significantly below predictions. The agreement was designed to provide the U.S. with a likelihood of achieving predictable catch levels -- catch levels that were *above* what had been harvested pre-treaty. For Canadians, the agreement provided a transition from percentage-based pre-treaty harvests to a regime where Canada was likely to receive benefits of its escapement efforts because U.S. catch was capped.

Run sizes of Fraser sockeye increased dramatically in the second four years of the agreement. U.S. catch, while stable in numbers of fish harvested, represented a significantly smaller percentage of the harvestable numbers than historical levels. As a direct result, U.S. fisheries had to be shortened far beyond expectations as harvest limits were met quickly under the conditions of high abundance.

U.S. Fraser fishery interests have long argued that the U.S. harvest should be defined as a percentage of the total allowable harvest. Canada has taken the position that, in the absence of direct and specific compensation in the form of harvest in some other fishery, the U.S. catch should not exceed a cap of 7.0 million sockeye over the basic cycle of sockeye runs, four years.

In the current negotiating cycle, the issue of U.S. harvest of Fraser sockeye is being discussed within the Fraser Panel. The U.S. section of the Panel has proposed a percentage based formula that would determine the U.S. harvest as a function of the Total Allowable Catch in a given year. Under that approach, the U.S. harvest could exceed 7.0 million over

a four year cycle. The proposal includes significant concessions to Canada on several issues (e.g., the treatment of in-river catches by native-Canadians, distribution of U.S. harvest across the many stocks that comprise the run, reduced U.S. harvest rates when run strength is low).

*From the perspective of the State of Washington, the objectives for Fraser sockeye and pink harvest must not be viewed in isolation. They are part of our overall goals which include as a priority the reduction of Canadian interception of coho and chinook stocks. So long as those goals are not compromised, we support efforts to improve U.S. Fraser fisheries.*

#### NOYES ISLAND HARVEST OF FRASER SOCKEYE

The issue of U.S. harvest of Fraser sockeye is complicated by recent levels of catch of these stocks in fisheries off of Noyes Island in southeast Alaska. These fisheries originally developed in order to harvest Alaskan pink runs. The Noyes Island fishery has been harvesting increasing numbers of sockeye. There are three basic components to the sockeye catch; Alaskan runs, returns to northern Canadian rivers (primarily the Skeena and Nass) and the runs returning to the Fraser system.

As the Fraser sockeye runs have increased, the numbers harvested in the Alaskan fishery have also grown. When the Treaty was signed, the potential catch off Noyes Island was generally dismissed as being very small and intermittent (related to oceanographic conditions and weather). In recent years the catches have continued to fluctuate from year to year, but they have been much larger than would have been anticipated. For example, the catch over the 1989-91 seasons exceed 525,000 sockeye.

The Fraser sockeye catch at Noyes Island is a major issue because of the historical context of the Fraser Annex to the Treaty. Prior to the Treaty, the U.S. harvest was expressed as a percentage of the harvest within the Strait of Juan de Fuca and the Strait of Georgia. Over the years, extensive Canadian harvests developed in areas outside of this defined zone. As a result, the U.S. harvest *percentage* declined as more and more Canadian harvest was "taken off the top." Therefore, a major negotiating objective for the U.S. in developing the 1985 Treaty was the need to express the U.S. harvest of Fraser sockeye in terms of the total harvest, wherever it occurred.

Canada seeks to apply this provision to the catch of Fraser sockeye at Noyes Island, even though this harvest was not known to exist when the Treaty was signed. The consequence of the Canadian position is to determine how the Alaskan harvest of sockeye is to be allocated under U.S. v. Washington. If these fish reduce the number of Fraser fish able to be caught in Washington waters, the state contends that they reduce both the Indian and the non-Indian share accordingly. The tribes contend that, since these fish are harvested by non-Indians, they should not reduce the tribal share in Washington waters. The legal issue

presented is the so-called "all-citizens" suit, referring to the argument that the Indian treaties bound all citizens of the United States, not just Washington citizens, to provide the opportunity for Washington's tribes to harvest their share of salmon.

*The U.S. has taken the position that the harvest of Fraser sockeye at Noyes Island should not affect the harvest of Fraser sockeye in Washington state. Washington strongly supports this position. It is our view that provisions should be agreed upon within the Annex addressing southeast Alaskan fisheries to address the Noyes Island catch of sockeye -- it is, after all, Alaskan fisheries that benefit from the interceptions.* In other words, provisions addressing other, significant Canadian concerns with the Alaskan fisheries would be sufficient to gain concurrence that the Noyes Island interceptions of Fraser River sockeye would not affect Washington catches. Failure to achieve such a solution could destabilize either northern or southern fisheries. Litigation over the issue could have the same outcome.

Absent a settlement of the issue in the context of PSC negotiations, litigation on the "all citizens" suit as applied to Noyes Island is scheduled for trial in the fall of 1994.

#### **WASHINGTON'S NON-INDIAN COMMERCIAL FISHING INTERESTS**

In recent months, Washington's commercial fishing interests have put forth a variety of arguments intended to increase the commercial harvest of Canada's Fraser River sockeye and to protect the net fisheries of southeast Alaska -- some 60% of the harvest in these Alaskan fisheries is by Washington-based fishers.

While I do not begrudge the position of Washington commercial fishers in their attempt to increase their harvest in Alaska and from Canada's Fraser River, I am suspicious of some of the arguments used by the industry to back their beliefs. I am skeptical of a belief that Canada will reach back to the 1930s' investment of the U.S. to provide a *quid pro quo* for increased U.S. harvest of salmon in the 1990s. Such a rationale seems to fall into the category of "preferred" but not "viable" U.S. positions.

As a result, this argument again would likely lead us to the *status quo*.

Similarly, the so-called "pasturage" debate -- that Alaska is due increased harvest of Washington and Canadian stocks merely because these fish spend time rearing in the Gulf of Alaska -- has yet to be adopted as a U.S. position. I believe this is a very risky theory - - one can imagine how devastating it would be if applied to Columbia River chinook stocks.

Both Governor Lowry and I have met with Washington's commercial fishers, including specifically those who harvest in southeast Alaska. They know that Canada is looking for changes in the southeast Alaska fishery and the Fraser -- that is, in fact, why they are so concerned.

Our commercial fishers know too that our negotiating strategy does not *desire* to place their

Our commercial fishers know too that our negotiating strategy does not *desire* to place their interests at risk -- we would love to gain our coho conservation objectives without cost -- but the fact remains that the measures we are seeking to address our chronic problems with chinook and coho stocks will have impacts on Canadian fisheries.

The result of further impasse is more and more restrictive measures in Washington-area fisheries dependent upon chinook and coho stocks and more and more frustration with the inability to deal with the major harvester on those same stocks: Canadian fisheries.

The problem we face is the limited number of opportunities to address Canadian needs and priorities as part of gaining ground on our coho and chinook objectives and the will of others to reject those few opportunities and provide none in their place.

RT:wm  
Attachment

RECEIVED  
FEDERAL BUREAU OF INVESTIGATION

MAR 9 1994

FEDERAL BUREAU OF INVESTIGATION  
DIRECTOR'S OFFICEDennis Austin  
Tom Cooney  
Whittier Johnson

February 1, 1994

Honorable Warren Christopher  
 Secretary of State  
 Department of State  
 2201 C Street N.W.  
 Washington, D.C. 20520

Dear Mr. Secretary:

We are certain you share our frustration with the last-minute decision of the Canadian government not to send its representatives to the January 24-28 Pacific Salmon Commission negotiations in Portland Oregon. Canada is dissatisfied with the pace of ongoing government-to-government negotiations to develop a process for implementing one of the key principles of the Treaty -- the equity principle -- which provides that each country should receive "benefits equivalent to the production of salmon originating in its waters." Although we believe the Canadian actions were counterproductive, we also believe there is more you can and should do to more strongly convey the commitment of the United States to move forward on this issue.

At a time when many U.S. government officials, including the President and the Vice President, have been in the Pacific Northwest to develop and promote coordinated and sustained action to prevent the need for more salmon listings under the Endangered Species Act, it is ironic that so little progress has been made to date on an issue under the negotiation control of the State Department.

We support the President's call to move forward on strategies to rebuild salmon stocks to optimum production through better harvest management and coast-wide habitat protection and restoration. The Treaty was intended to provide the vehicle for this progress. However, it has been clear for several years that progress on the equity issue is critical to the success of the Treaty. Absent such progress, Canada simply will not cooperate fully in rebuilding depressed Pacific salmon stocks.

We disagree strongly with many aspects of Canada's position on equity. Nevertheless, we are not convinced that the State Department has done all it can to explore reasonable options with the Canadians that could break the impasse. Our representatives to the U.S. Section of the Pacific Salmon Commission remain prepared to pursue such options.

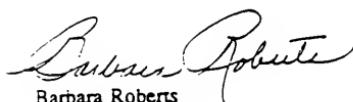
Having recognized that the United States Section itself would remain "gridlocked" on the equity issue, the State Department decided last summer to negotiate equity on a government-to-government basis. We supported that decision. We also supported your decision in July of 1993 to notify the U.S. Section that it would be in jeopardy of violating international obligations if similar "gridlock" prohibited development of a meaningful U.S. position on chinook conservation. Given Canada's view on equity, progress on conservation issues will not proceed absent parallel progress on equity.

We were encouraged by the State Department's leadership on these issues last summer. However, we will be extremely disappointed if the State Department now allows itself to fall into the same gridlock on equity as did the Commission. We believe reasonable and timely steps can and must be taken in the government-to-government negotiations, steps that Canada would view as legitimate attempts to address its needs. By separate letter, our representatives on the Commission have provided to your department's representative our views on what those specific next steps should be.

Our representatives stand ready to provide whatever additional assistance they can to ensure progress in the government-to-government negotiations on equity.

Sincerely,

  
Mike Lowry  
Governor of Washington

  
Barbara Roberts  
Governor of Oregon

  
Billy Frank, Jr.  
Northwest Indian Fisheries Commission

  
Eugene Greene, Sr.  
Columbia River Inter-Tribal Fish Commission

cc: Washington/Oregon Congressional Delegations  
Tribal Chairs  
PSC Commissioners  
Will Stelle

February 2, 1994

Mr. David A. Colson  
Deputy Assistant Secretary  
for Oceans & Fisheries Affairs  
Department of State, Room 7829  
Washington, D.C. 20520

Dear Dave:

As you might have guessed, we southern area Commissioners and Alternates spent some time at the Portland meeting discussing the ongoing government-to-government meetings relating to equity. In particular, we focussed on the question of what it is we think you should do to move this issue along, particularly in light of Canada's increasing reluctance to permit progress on other important treaty issues, such as the renegotiation of expired chapters of Annex IV.

We do not think Canada should be rewarded for its decision to boycott the Portland meeting, as we clearly indicated in the letter sent by the U.S. Section to Fortier. However, it has been clear since we embarked on the "two-track" strategy that progress on management and conservation issues is directly linked to progress on the equity issue. The attached document captures our views on what the next step in the equity discussions should be.

We recognize that you will want to time the proposal to maximize its value in the negotiations with Fortier. We would be interested in hearing your views and receiving your advice about how or whether we should allude to this next step when we meet next week with the Canadians.

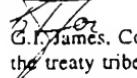
Sincerely,



Robert Turner, Commissioner for Washington and Oregon



Rollie Rousseau, Alternate Commissioner for Washington and Oregon

  
G.R. James, Commissioner for the treaty tribes

N. Kathryn Brigham, Alternate Commissioner for the treaty tribes

Attachment

cc: Chuck Meacham  
Chuck Walters  
Hank Beasley



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (206) 753-6780

February 9, 1993

The Honorable Tom Foley  
United States Representative  
Speaker of the House  
1201 Longworth House Office Building  
Washington, D.C. 20515

Dear *Hon. Tom Foley*

The critical, final negotiating session for 1993 of the Pacific Salmon Commission begins this week in Bellevue. I want to let you know my view of the status of these negotiations in anticipation of the outcome later this month.

At the outset, I want to thank you for your interest in these negotiations and your continued, close communication with state and tribal officials. I urge your continued support of efforts to substantially reduce the harvest of Washington-bound coho and chinook salmon off the west coast of Vancouver Island (WCVI). The constraints we currently must place on Washington's fisheries to meet our conservation objectives for chinook and coho as a result of the WCVI harvest are unacceptable.

I am pleased that the entire U.S. Section of the Pacific Salmon Commission now supports the objective of WCVI harvest reductions. I am concerned, however, that some factions of the U.S. Section recognize the need for the reductions but are unwilling to discuss several realistic options to achieve them.

Realistic options appear in four categories. In its position, Canada has made it clear that it has serious concerns about fisheries in Alaska which intercept Washington-bound and/or Canadian-bound fish. We also know that Canada has been seeking for years to have a more meaningful discussion about the so-called equity provisions in the Treaty. Third, we strongly suspect that Canada would entertain discussions which link the U.S. commercial harvest of the sockeye and pink salmon from Canada's Fraser River to WCVI reductions. Finally, we may be able to develop some other intangible, yet-to-be-defined proposal that might gain Canada's agreement to reduce its harvest of Washington-bound chinook and coho.

The Treaty's implementing legislation does not allow the voting commissioners representing the State of Washington and the treaty Indian tribes to proceed with negotiations without the concurrence of the commissioner representing Alaska. While I

The Honorable Tom Foley  
Page 2  
February 9, 1993

understand the purpose of this consensus-voting requirement, I am concerned that the full U.S. Section will be unable to pursue viable negotiating options. I am particularly concerned because these options appeal to the very proposals which best take steps toward fulfillment of the commitments in the Treaty to rebuild chinook stocks, reduce interceptions, and address equity.

If it were not for these Treaty commitments, my concern could be dismissed as parochial. I firmly believe that the information shows clearly that these are not parochial concerns.

By preventing discussion of other options, the only thing "on the table" to gain Canadian reductions on the WCVI appears to be Washington's commercial Indian and non-Indian harvest of Canada's Fraser River stocks. As a sole option, this strategy will unnecessarily pit one segment of Washington's fishery against another. It will needlessly resurface long-standing arguments between commercial and recreational fishers.

This outcome is not necessary. If it occurs, it will not be the fault of either Washington's commercial fishers nor its recreational fishers. But these fishers would suffer the consequences.

I believe the U.S. Section should do everything possible to overcome the barriers to discussing all viable negotiating options, particularly when other options clearly move toward fulfilling our national commitments in the Treaty.

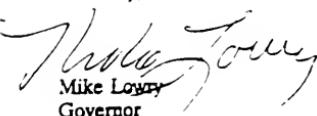
I am committed to seeking reductions in the Canadian harvest of chinook and coho in the WCVI fishery. I believe that it is totally unnecessary for the debate to become an allocation issue between sport and commercial fishers in Washington. I am concerned that this will be the unfortunate outcome if the U.S. Section cannot discuss with Canada all options available to reduce the WCVI harvest.

As you know, the Department of State plays a key role in these negotiations. Not only is the Department's representative, Ambassador David Colson, chair of the entire U.S. Section, but he is an experienced negotiator and diplomat with the full confidence of Commissioners representing Washington and the treaty Indian tribes. In addition, the Secretary of State has authorities which are intended to encourage the U.S. Section to comply with its obligations under the Treaty. I hope the Secretary considers his authorities.

The Honorable Tom Foley  
Page 3  
February 9, 1993

As these negotiations continue, I request that you remain mindful of our efforts to broaden the options being considered by the U.S. Section and ensure that Ambassador Colson and the Department of State to do the same.

Sincerely,

  
Mike Lowry  
Governor

**Congress of the United States**  
**Washington, DC 20515**

March 24, 1993

Secretary Warren Christopher  
 Department of State  
 2201 C Street NW  
 Washington, D.C. 20520

Dear Mr. Secretary:

We have been following closely the Pacific Salmon Treaty (PST) negotiations with Canada. We already have expressed to you the importance of these negotiations toward positive actions to restore the health of Northwest salmon stocks and avoid future listings under the Endangered Species Act (ESA) while maintaining viable Indian and non-Indian fisheries on Fraser River stocks.

We are concerned about a lack of progress. Nothing has been done within the Pacific Salmon Commission to address the 1993 conservation concerns for chinook stocks listed under the ESA or for coho stocks returning to Northwest streams.

While we would have preferred action within the Commission, we do not share the conclusion that the lack of progress is the inevitable outcome of the voting requirements of the U.S. Section to the Commission. We believe you and U.S. Commissioner Ambassador David Colson have been provided ample authority to address conservation concerns and U.S. Treaty obligations.

While we are convinced that a bilateral agreement through the Commission is in the best interest of both countries, it is imperative that the United States provide the required leadership that results in an acceptable agreement with Canada. Moreover, we believe that the structure of the Commission and the U.S. Section were never intended to allow the frustration of international commitments by the U.S. or serious domestic conservation efforts.

We urge you to use your authorities, including government-to-government action if necessary, to break any impasse so that an acceptable 1993 regime on stocks returning to the Northwest is in place prior to completion on April 9, 1993, of our domestic management process.

We understand that the U.S. Section is discussing a promising long-term and comprehensive approach to salmon management under the Treaty. Such an approach would include commitments to improve the productivity of natural stocks thereby addressing future ESA concerns, development of harvest regimes that respond to changes in abundance of stocks, and needed changes in the process of decision-making with the Commission. We are prepared to consider favorably reasonable proposals requiring Congressional action to put into place a long-term, comprehensive regime. However, we will be very disturbed if the opportunity to address 1993 concerns is lost due to inaction of the Commission or the United States.

Sincerely,

*Terry Moran*

*Jolene Hascall*  
*Norm Clark*  
*Marin Lembke*  
*Jim McRae*  
*John S. Tolay*

*Mike Keidler*

*Mark Thorne*

Bob Smith ~~St. Regis~~  
George Brown ~~Paul Wye~~  
Mike Kepetash ~~John~~  
~~Bob Packwood~~ Elizabeth Duz  
Larry Dennis



## United States Department of State

Assistant Secretary of State for Oceans and  
International Environmental and Scientific Affairs

Washington, D.C. 20520

JUL 14 1993

## UNITED STATES SECTION, PACIFIC SALMON COMMISSION

Ambassador David A. Colson  
Deputy Assistant Secretary for Oceans  
& Fisheries Affairs

Mr. G. I. James  
Lummi Indian Tribe

Mr. Charles Meacham, Jr.  
Deputy Commissioner  
Alaska Department of Fish & Game

Mr. Robert A. Turner  
Commissioner  
Washington Department of Fisheries

Pursuant to authority delegated to me, (50 Fed. Reg. 28487) and after consultation with the Department of Commerce and the Department of Interior, and in accordance with 16 USC 3632(g)(7), I hereby determine that the United States is in jeopardy of not fulfilling its international obligations under the United States-Canada Pacific Salmon Treaty and so certify to the United States Section. It is understood that Canada bears responsibility in this regard, as well.

The reason for such determination follows:

A central ingredient of the Pacific Salmon Treaty is the chinook rebuilding program it established designed to rebuild chinook stocks on a coast-wide basis by 1998.

It is now 1993 and the Pacific Salmon Commission has not addressed this issue in any effective way. Nor has the U.S. Section adopted an agreed approach to deal with this matter. The bilateral Chinook Technical Committee Report of November 17, 1992 states in part (at Executive Summary, p. xii):

"The rebuilding response of the escapement indicator stocks is inconsistent with expectations. There has

- 2 -

been a general decline in the proportion of stocks that are classified as rebuilding, while the proportion of stocks that are not rebuilding has increased. Furthermore, 29 of the 42 indicator stocks had lower escapements in 1991 than in 1990 and less than half (16 of 36) of the escapement indicator stocks with goals are currently classified as Above Goal, Rebuilding, or Probably Rebuilding. This is especially significant since most stocks are now more than halfway and the remainder are more than two-thirds through their rebuilding programs. Of particular concern are the 15 stocks classified as Not Rebuilding or Probably Not Rebuilding. In 1991, the escapements of all of these stocks were less than 60% of their rebuilding goals and, for seven of these 15 stocks, the average escapement during the rebuilding period has actually declined from the base period level."

The United States Government and the Canadian Government have agreed that the Commission shall report to the Governments by January 15, 1994, on the progress it has made to achieve the rebuilding program required by the Treaty. This Report shall:

- i) Provide definitions needed for the consideration or evaluation of the rebuilding program including: "rebuilt," "rebuilding," "stock of concern," "depressed stock," "escapement indicator stock," and "pass through."
- ii) Provide a program to monitor and reduce incidental chinook mortalities on a coast-wide basis.
- iii) Provide a chinook management program that is responsive to the abundance of chinook stocks to ensure that the Treaty's chinook rebuilding goals are met by 1998.

In accordance with 16 USC 3632(g)(), I specify that January 15, 1994, is the date by which a decision by the U.S. Section concerning the above elements is desired. It is of course preferable that the Report to be provided by the bilateral Commission contain jointly agreed recommendations of the U.S. and Canadian Sections. If that is not possible, however, a clear and comprehensive U.S. Section position on the above elements expressed in operational terms, which can be proffered in good faith by the United States, is required by the above date.

Sincerely,



Elinor G. Constable



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (206) 753-6780

June 21, 1994

The Honorable Bill Clinton  
President of the United States  
The White House  
1600 Pennsylvania Avenue N.W.  
Washington, D.C. 20500

Dear President Clinton:

The existing impasse with Canada under the Pacific Salmon Treaty is endangering conservation of our salmon stocks and is threatening to endanger human lives. At this point only your administration, in concert with Canada and in cooperation with Alaska, Washington, Oregon and affected treaty tribes, has the legal power to steer us all into calmer, saner and safer waters.

I write, therefore, to urge you to focus your authority under the U.S. Constitution and under the Treaty to bring an end to the management impasse that, if it continues, may wreak great damage upon our fisheries, citizens and future relations with Canada, this state's cordial neighbor.

An urgent problem stems from Canada's decision to charge a \$1,100 (U.S.) tax on all U.S.-flagged fishing vessels transiting Canadian waters between Washington and Alaska. These waters are part of the Inland Passage that shelters mariners along British Columbia and Southeastern Alaska from the storms of the Pacific. The unprecedented tax will hurt boat owners and may expose to storm seas those U.S. fishermen who cannot pay the tax or who on principle refuse to do so. This action could cause U.S. fishing boats and their crews to go down in a Pacific gale because of a tax invented to tweak our attention. No one should propel boats of either nation toward danger simply because governments have not yet worked hard enough to agree.

Dealing with the tax, however necessary, is a stopgap that must not divert attention from the fact that Northwest salmon stocks are in deep trouble and failure to implement the Pacific Salmon Treaty is one of the chief reasons. Part of the danger to our salmon stocks comes from the lack of treaty arrangements whereby Canada agrees to pass through their fisheries weak coho, chinook and other stocks, including stocks from the Snake River that under the U.S. Endangered Species Act we have declared threatened or endangered. There is no way of disentangling our expensive and contentious domestic efforts to save weak stocks from the overall management under the treaty of the salmon that we and the Canadians jointly exploit and revere.

The Honorable Bill Clinton  
June 21, 1994  
Page Two

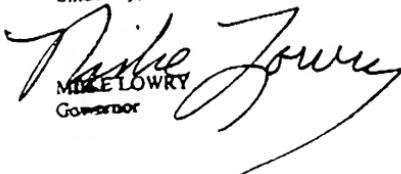
We in turn must agree to reduce interceptions in our fisheries of stocks that the Canadians deem valuable. There lies the sticking point. Alaska disagrees with Washington, Oregon and the tribes over closures in Alaskan waters that the Canadians say must occur before they can agree to pass through salmon that Washington, Oregon and the tribes wish to receive. I would point out that a majority of the catch in the disputed Alaskan fishery is taken by boats that home port in Washington State.

On the U.S. side, under the cover of the Pacific Salmon Commission, the states and tribes meet to work out our treaty give-and-take. As it is set-up, this commission requires a unanimous vote before a U.S. treaty position results. Such a mechanism requiring absolute agreement by all of its members is designed to break down. It is broken now and stands in the way of conservation of Northwest salmon. Oregon, Washington and the tribes have no trouble reaching agreement on what needs to be done and have made numerous proposals to Alaska, but Alaska says no and exercises its built-in veto.

The U.S. federal government alone has the power to override the stalemate that plagues the commission and must use this power to negotiate a decision with the Canadians. Repeatedly, the Secretary of State and the Secretary of Commerce have heard from me, from my regional colleagues, from the Northwest's congressional delegation, from the tribes, from recreational and commercial fishers and from conservationists, asking that the administration exercise the powers it has under the Constitution and the Pacific Salmon Treaty to break the deadlock. But action has not been forthcoming.

Now the law of unintended and unwanted consequences is applying to that lack of action. We again petition the administration to act before the situation gets worse. I pledge to you Washington State's earnest desire to review and reform the Pacific Salmon Commission. I also pledge to do our utmost to help you bring about fruitful treaty agreements with our Canadian friends. I cannot express more strongly in the meantime, however, the need for energetic federal leadership to break the current impasse and so renew treaty talks that can eventuate in conserving our salmon and leaving our fishing boats free to transit the Inland Passage.

Sincerely,

  
Mike Lowry  
Governor



STATE OF WASHINGTON

## OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (206) 753-6780

July 1, 1994

The Honorable Albert Gore  
Vice President of the United States  
Office of the Vice President  
Old Executive Office Building  
Washington, D.C. 20501

Dear Mr. Vice President:

Thank you for devoting your skill and prestige to the resolution of our controversy with Canada over Pacific salmon interceptions. Such action is consistent with my long-held belief that strong federal leadership is needed to break the gridlock in the Pacific Salmon Commission in an effort to avoid in the future the very circumstance in which we now find ourselves.

As you address this challenge, I urge you not to merely incorporate into 1994 the regimes agreed upon in 1993. The *status quo* is and remains unacceptable.

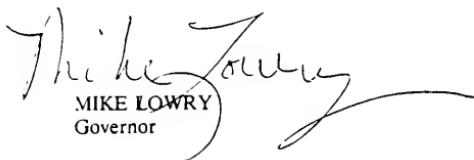
We can no longer rely on the short-term agreements that are contributing to the decline of the salmon resource. I recommend that all your efforts, including those directed at 1994, should be focussed on measures that lead toward a comprehensive, coastwide salmon rebuilding regime. Primary among these should be a revision of the decision-making structure of the U.S. Section of the Commission.

Objective review will show Washington and Oregon's longstanding willingness to contribute to a solution, including last year's agreement to reduce non-Indian Fraser River sockeye harvest for a Canadian reduction of coho harvest on the West Coast of Vancouver Island. Please be assured that we stand ready to work with you again this year to contribute with other U.S. interests to an acceptable outcome that implements coastwide the Treaty's original intent to rebuild runs and equitably share harvest.

The Honorable Albert Gore  
July 1, 1994  
Page 2

There are critical elements I believe should be addressed in 1994 in order to move toward a comprehensive long-term agreement. At my request, U.S. Commissioner and Director of the Washington Department of Fish and Wildlife, Robert Turner, assembled a brief description of these items. I have enclosed it for your information. I urge you to consider each, and seek to address them within the understandings you reach with Canada this year.

Sincerely,

  
MIKE LOWRY  
Governor

Enclosure



State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

Mailing Address: 600 Capitol Way N, Olympia, WA 98501-1091 • (206) 902-2200; TDD (206) 902-2207  
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

June 30, 1994

TO: Governor Mike Lowry  
FROM: Bob Turner, Director  
SUBJECT: PACIFIC SALMON TREATY

In response to your request, below are identified issues that must be addressed as we move through 1994 negotiations with Alaska and Canada toward a comprehensive rebuilding agreement. With a strategy to pursue these issues clearly identified and understood by all parties, a 1994 fishing regime agreement could, I believe, be rapidly constructed and agreed upon.

First, it is important that Canada remove its notorious transit fee on U.S. fishing vessels passing through Canadian waters. However, this financial conflict should remain only a financial conflict and its resolution should not delay discussions on a 1994 and long-term fishing agreement. This fee is incidental to the serious conservation concerns for the salmon resource.

Second, the U.S. must be mindful that, without specific agreement otherwise, continued Alaskan harvest of Canadian sockeye will precipitate in October a trial under U.S. v. Washington to resolve a dispute between Alaska and other parties as to Alaska's role, if any, in satisfying the United States' obligations under the Stevens Treaties with the Indian Tribes in Washington.

This complicated issue should not go to trial in October as is now the schedule. Washington has suggested to Alaska and the U.S. a variety of ways that would quite simply and likely avoid the conflict by beginning to address Canadian concerns for Alaska's northern boundary fisheries. Alaska appears to have entertained none of these ideas. The U.S. should review these proposals, recognize the significance of this potential litigation, and gain the necessary agreements in 1994 to avoid the Indian/non-Indian accounting issues associated with Alaskan catch of Fraser River sockeye this year. The U.S. Attorney should request from the U.S. District Court a delay in the trial date until sufficient time, perhaps as short as one year, has been provided the parties to develop a long-term settlement of this complex issue.

Governor Mike Lowry  
June 30, 1994  
Page 2

Third, new and fresh federal perspectives should be infused into the controversy with the clear mandate to develop options to bridge 1994 negotiations into a credible long-term salmon rebuilding agreement. Ask these individuals to review the objectives and negotiating positions of the interests to determine which have credibility and which are merely protecting the *status quo*.

Fourth, the U.S. must move rapidly to advance the negotiations over equity which have been deadlocked at the government-to-government level for more than a year. All creative ideas for comprehensive agreements on fishing regimes now are blocked by the lack of progress on this core issue. State Department or other federal officials must assemble the skills and resources necessary to fulfill this federal commitment to resolve the equity issue.

Fifth, the federal government must recognize that the Pacific Salmon Treaty Act, requiring the concurrence of Alaska and all other commissioners to implement federal policy, is flawed. No long-term salmon rebuilding agreement can be developed and implemented unless the process of decision-making is improved. The Administration must commit to aid us in a reform of the decision-making structure of the U.S. Section. This is a critical procedural step toward a long-term solution.

Sixth, with a commitment to a new decision-making structure in place, the federal government must work with the U.S. Section of the Commission to aggressively establish a strategy to achieve the most important goal of all, a long-term rebuilding agreement within which harvest levels respond to abundance and conservation needs.

Finally, with these policy objectives established and commitments effectively conveyed to Canada, shape a fishing regime for 1994. It is likely that the 1993 fishing regime would provide a starting point for these discussions.

RT:wm

1 DRAFT

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6  
7 **Proposed Amendment of the  
Pacific Salmon Treaty Act of 1985 (16 USC 3631)  
to Improve Decision Making Capability of the United States Section**8 Background9 In 1985, the Pacific Salmon Treaty was ratified by the United States and Canada to  
10 establish common principles and a bilateral mechanism for cooperatively managing the  
11 salmon stocks that cross the borders between the two countries. Hopes were high that  
12 increased cooperation would help rebuild depressed stocks and provide a basis for each  
13 country to make rational management and investment decisions regarding its salmon  
14 resources. The promises remain unfulfilled. For example, a coastwide program to rebuild  
15 depressed chinook stocks – arguably the centerpiece of the Treaty – is not succeeding.  
16 Progress on the two main principles of the Treaty – resource conservation and sharing of  
17 benefits (equity) – has been hindered by entrenched positions taken by constituents in  
18 both countries.19 The Treaty established the Pacific Salmon Commission, comprised of four individuals from  
20 each country, to carry out the purposes of the Treaty. Regional "panels" and joint technical  
21 committees also were created to advise the Commission. Each country has a single vote  
22 within the Commission; both sides must agree before a decision is taken. Each country  
23 appoints its Commissioners and makes decisions within its "Section" according to its own  
24 domestic procedures.25 The composition of the United States Section and its decision making procedures are  
26 established in the Pacific Salmon Treaty Act of 1985 (16 USC 3631). The Act provides that  
27 the four U.S. Commissioners, appointed by the President, will include three voting  
28 Commissioners: one representing Alaska, one representing the states of Washington and  
29 Oregon, and one representing the treaty Indian tribes. The fourth U.S. Commissioner must  
30 be an official of the United States Government, but has no vote. Decisions are taken  
31 within the U.S. Section only by consensus, i.e., when all three voting Commissioner agree.32 The Problem33 This decision process was intended to enhance consensus-building, maintain regional  
34 control over the decisions, and avoid the potential of a majority or plurality of the  
35 Commissioners forcing unwanted decisions upon the minority. Instead, it has become a tool  
36 for nearly every highly-interested constituency represented by the various Commissioners to  
37 block decisions. On too many occasions, the result has been an expensive, time-consuming  
38 debate that continues without conclusion, sometimes at great cost to the resource, the  
39 purposes of the Treaty, and the credibility of the United States.

1      The Solution

2  
 3 Clearly, the the Pacific Salmon Treaty Act of 1985 must be amended to ensure that the  
 4 U.S. Section can make timely decisions consistent with domestic law, the interests of the  
 5 United States as a whole, and international commitments under the Pacific Salmon Treaty.  
 6 A better balance needs to be struck between the desire to maintain regional control and  
 7 the necessity to make timely decisions in the overall interest of the United States.  
 8 Accordingly, the Pacific Salmon Treaty Act of 1985 should be amended as follows:

9      *Current provision as provided in Section 3(g):*

10  
 11      (g) VOTING REQUIREMENTS.--The United States Section shall operate with the  
 12 objective of attaining consensus decisions in the development and exercise of its single  
 13 vote within the Commission. A decision of the United States Section shall be taken  
 14 when there is no dissenting vote.

15      *Proposed amended provision:*

16  
 17      (g) VOTING REQUIREMENTS.--The United States Section shall strive to attain  
 18 consensus in the formulation of positions and in reaching decisions in the development  
 19 and exercise of its single vote within the Commission. A decision of the United States  
 20 Section shall be taken or a position adopted when there is no dissenting vote. In the  
 21 event the voting members of the United States Section fail to reach consensus in a  
 22 timely manner and the federal United States Commissioner deems it necessary for the  
 23 United States Section to reach a decision to meet its international obligations under the  
 24 Treaty or to adopt a position to further the deliberations of the Pacific Salmon  
 25 Commission according to appropriate schedules, the following procedures shall apply:

26  
 27      (1) The federal Commissioner shall notify each of the voting United States  
 28 Commissioners in writing of the need for a position or decision by the United  
 29 States Section, and the time by which the position or decision is required.

30  
 31      (2) Prior to the time when the position or decision is required, the federal  
 32 Commissioner shall present a proposed position or decision to the United States  
 33 Section. The position or decision proposed by the federal Commissioner shall be  
 34 consistent with applicable federal statutes and United States trust responsibilities  
 35 and obligations to United States treaty Indian tribes.

36  
 37      (3) The position or decision proposed by the federal Commissioner may be  
 38 modified by the three voting United States Commissioners only to the extent they  
 39 unanimously agree, or by the federal United States Commissioner who, after having  
 40 considered the deliberations of the United States Section, deems it appropriate to  
 41 modify the original proposal or decision to better reflect those deliberations.

42  
 43      (4) A decision of the United States Section shall be taken, or a position to be  
 44 advocated by the United States Section reached, when the time period identified in  
 45 subsection (g)(1) has expired or when the three voting Commissioners have reached  
 46 unanimous agreement on the federal Commissioner's proposal or a specific  
 47 alternative.

Statement of Robert P. Zuanich  
Purse Seine Vessel Owners Association

**Before the Subcommittee on Fisheries Management,  
Environment and Natural Resources  
United States House of Representatives  
August 2, 1994**

Distinguished Chairman:

Recent developments surrounding the negotiations with Canada over the Pacific Salmon Treaty are creating concern among commercial salmon fishermen in Washington State. Fishery regime proposals appear to be under consideration which would trade away to Canada hard-earned U.S. fishing rights on Fraser River stocks passing through the Puget Sound area. And the non-Tribal fishery alone has been suggested for this sacrifice.

As you know, Canada's argument in this matter has been that its interceptions of U.S. bound salmon have diminished while the U.S. is intercepting increasing numbers of Canadian bound salmon. This, in Canada's view, has created an imbalance in so-called "equity" in each country's interceptions of the other's fish. Unfortunately, this claimed Canadian equity imbalance is directly attributable to Canada's own failure to live up to the equally important conservation principle of the Pacific Salmon Treaty. And it is attributable to U.S. conservation of Canadian salmon.

It is critical to understand that both countries must be balanced in conservation before it is appropriate to consider whether they are balanced in equity.

When one country conserves the other's salmon, it does so because it expects those runs to rebuild and some day contribute to its future salmon fisheries. This is what Washington State fishermen have done for decades in their Puget Sound Fraser River fisheries. And it is what has been done in Alaska. Now that our U.S. conservation has paid off in strong, healthy Canadian cross-boundary runs, those

runs are inevitably contributing more and more salmon to our fisheries. (Note, however, that previous Treaty regimes have prevented the U.S. from increasing its interceptions in the Fraser River fishery in Puget Sound.)

Conversely, when one country fails to conserve the other's salmon, it may equally be expected that those runs will continue to decline. This is what Canada has done to our Washington bound coho and chinook runs. Today, because of the Canadian refusal to conserve and because of those declines, those cross-boundary runs are contributing less and less to Canadian harvests. This is to be expected.

The U.S. has conserved and rebuilt Canadian cross-boundary runs. At the same time, Canada has refused to conserve U.S. cross-boundary runs. And now that the inevitable long term result of our conservation and of their lack of conservation has come to pass, they complain that they are not in "equity."

This year, for the first time in history, the National Marine Fisheries Service, acting under the authority of the Magnuson Act, closed the ocean salmon fisheries from Cape Falcon, Oregon to the U.S.- Canadian border. The States of Washington and Oregon have also closed adjacent state waters, and the State of Alaska has taken complimentary action. These actions have been to reduce the harvest of coho salmon and in response to concerns under the U.S. Endangered Species Act for chinook salmon. Unfortunately Canada has not closed its salmon fisheries.

For these reasons, the protection of Washington's coho and chinook salmon must be a high priority in these upcoming negotiations. The Puget Sound Fraser River fishery, however, is not an appropriate trade-off to achieve this goal. And I believe that to use the Puget Sound Fraser River fishery as trading stock to reward this counterproductive Canadian behavior is inconsistent with fairness and with the legitimate long-term goals of the Pacific Salmon Treaty.

Moreover, it is unclear to me why the non-Tribal fishery alone has been chosen to make this conservation sacrifice.

Recent years have seen a dramatic improvement in the relationship between Tribal and non-Tribal fishers in Washington. They work together in salmon enhancement and habitat rehabilitation projects. They collaborate in our local oil spill response program. They are developing a joint project for the recovery and disposition of lost fishing net. They work with each other in the political and fisheries management processes. This cooperation is a remarkable positive achievement against a sad history of divisiveness. I am concerned that to shatter the concept of

50-50 Tribal/non-Tribal sharing may exacerbate old animosities and destroy the stability of this long standing allocation settlement.

Equal sharing between Tribal and non-Tribal groups was a fundamental part of the political understanding which led to the adoption of the Pacific Salmon Treaty in 1985. At that time, the legal and political warfare which had followed the 1974 Boldt decision was still recent history. Washington Initiative 456 (RCW 75.56), which unsuccessfully attempted to reverse Boldt, had been passed by the voters of our state only the previous year, in 1984. Settlement of these intense Tribal - non-Tribal issues was critical to adoption of the Treaty

At the time of adoption, the Tribes were concerned that the U.S.- Canadian Treaty relationship under the International Pacific Salmon Fisheries Commission had been previously used to prejudice the Tribal 50% fishing right. As a guarantee against a recurrence of these events, the Tribes insisted on and were provided with a commissioner on the U.S. Section of the Pacific Salmon Commission. This appointment, along with the veto resulting from the requirement of unanimity on the Commission, and the assurance that the Commission would be responsible for future negotiations with Canada, provided the Tribes with security against such a use of the Treaty process in the future.

In 1985, the Tribes also asserted that their 50% share of the chinook salmon harvest included the Washington salmon caught in the waters of Alaska. A specific part of the Pacific Salmon Treaty settlement was a Tribal stay agreed to in the so-called "all citizens case" in which this issue was before the courts. This stay was an implicit agreement that the Tribal share would be limited to 50% of the chinook caught in Washington. While the lack of a similar stay with respect to Fraser River sockeye which are increasingly caught in Alaskan waters has plagued the Treaty negotiating process in recent years, the proposed trade goes far beyond merely re-establishing Tribal - non-Tribal equivalence based on this Alaskan harvest.

Puget Sound Non-Tribal commercial fishers were concerned about the repeal of the Fraser River Convention of 1930 and about the loss of the highly successful International Pacific Salmon Fisheries Commission. The new Treaty replaced the Convention and rolled the Fraser River fisheries into the current single agreement with the Canadians. Along with stability in the Tribal - non-Tribal relationship, Non-Tribal commercial fishers were provided with an industry member to the new Fraser River Panel which would manage the U.S. in-season Fraser River fisheries.

These resolutions hinged upon the understanding by all parties concerned that Tribal and non-Tribal fishers would share this resource 50-50. This was the basis upon which all parties acted in supporting the Treaty, in their testimony before Congress and in their dealings since. To change this 50-50 relationship today would breach that understanding and call into question the good faith of our government toward its citizens who have relied upon it.

Neither the Puget Sound Fraser River fisheries nor the non-Tribal share of those fisheries should be asked to pay the price of a deal with the Canadians under the Pacific Salmon Treaty. I hope the Administration will take these views into account as we struggle in the months ahead to achieve a fair, and equitable settlement of our Treaty relationship with our Canadian neighbors.

WRITTEN TESTIMONY FOR THE  
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE  
REGARDING  
THE PACIFIC SALMON TREATY

by

Jev Shelton  
Alaska Alternate Commissioner  
Pacific Salmon Commission

August 2, 1994

Dear Chairmen:

My name is Jev Shelton. I own and operate the fishing vessel 'Kirsten Anna' and am now the alternate Alaskan Commissioner for the Pacific Salmon Commission. I have resided in Juneau, Alaska for 24 years, and have fished commercially in Alaska waters for 23 years. Prior to that time I fished as a crewman for eleven seasons in the State of Washington. My involvement with Pacific Salmon Treaty issues dates from 1974. I participated in all subsequent negotiations through the conclusion of the Treaty in 1985. In recent years I have been a member of the Treaty's Northern Panel and have served as Vice-chair and Co-chair in that body. I appreciate the opportunity to provide testimony on an issue as important to Alaskan fishermen as the Pacific Salmon Treaty. Unfortunately, this Committee hearing is being held in the height of the salmon fishing season, and therefore I have had limited time to develop full statements on the issues posed by the Committee.

**ALASKA FISHERMEN'S TREATY PERSPECTIVE**

The Pacific Salmon Treaty of 1985 (hereinafter referred to as Treaty) evolved over many years of negotiations and political posturing, and thus was and is surrounded by a complex of impressions and even myths. But its simple, fundamental rationale should not be lost to sight. Many, probably most stocks of Pacific salmon are produced jointly by the U.S. and Canada. That is, those salmon stocks in their intricate natural life cycles utilize marine habitat off both countries and frequently are available for harvests by the fleets of each nation. The straightforward, practical need to cooperate in order to protect and foster the valuable resource represented by these stocks motivated the consummation of the Treaty as

an instrument to formalize cooperation in the relevant fisheries.

The Treaty in 1985 provided a greater opportunity to effectively conserve and manage this joint resource. The Treaty did not alter anyone's rights, nor did it settle issues of differing perspectives or interpretations. It simply recognized that fair sharing and conservation were required for the long-term health of the salmon resource. The overriding importance of the Treaty from the fishermen's perspective was that it provided a bilateral framework for conserving the salmon resource and optimizing production. This approach was anticipated to provide increased benefits to fishermen of both countries. Also of significant importance was a recognition that traditional fisheries were legitimate and to be maintained, and that the natural fluctuations in abundance in salmon populations were recognized and had to be incorporated in an approach to managing and sharing the resource fairly.

Alaska fishermen felt the new negotiation process established under the Treaty and U.S. Public Law 99-5 might be acceptable because: the Northern Panel had a significant role in the process, and fishermen were to hold many of the seats on the panel; the consensus process on the U.S. side assured Alaska that they could not be "rolled" over allocation of the harvests among the fleets and interest groups; and the undue disruption and optimum production clauses of the Treaty gave Alaskan fishermen assurance that their interests were protected.

From the point of view of professional fishermen and professional managers in Alaska, the expectation from the Treaty was that political orientations would be set aside and the practical job of conserving, managing and optimizing the salmon resource could be undertaken efficiently. Alaska supported the Treaty in the hope that it would provide a basis for improving cooperation between Canada and the U.S. in dealing with a shared resource. Our belief was based on previous experience with the constructive and successful cooperation by the two countries in response to the disastrous decline of the Fraser River salmon earlier this century. Importantly, it was expected and assumed that the Treaty principles and provisions would be interpreted, and the fishery arrangements negotiated between the two countries would be established, consistent with the biological realities of the salmon populations and their behavior. It was our hope that rigid, bureaucratic or ideological systems would not be imposed, thus constraining legitimate access to and management of the naturally fluctuating salmon populations.

The Alaska Department of Fish and Game has a strong record of ensuring

that necessary salmon escapements are achieved. This orientation includes repeated actions cooperating with Canadian expressions of concern for specific escapement needs. Such a 'conservation first' approach is one that is understood and supported by fishermen in Southeast Alaska. The Alaska constitution contains an article specifically devoted to the management and utilization of natural resources. Article III, Section 4 states: "Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle...". State statutes establishing the responsibilities of the Commissioner of the Department of Fish and Game and the Department reinforce a strong conservation mandate while managing for sustained yield. The state of health of the salmon resources in Southeast Alaska is a testament to the successful implementation of Alaska's conservation policies.

**1. Is there an alternative to the management regime in the Pacific Salmon Treaty? Is unilateral fisheries management of mixed stocks possible?**

For salmon stocks under the jurisdiction of the Northern Panel of the Pacific Salmon Commission, goals related to conservation and optimizing production generally have been achieved. Stocks in the northern boundary area are in general healthy, at historic levels of abundance, and, when there have been demonstrated weaknesses and stock conservation concerns requiring our assistance, Alaska has responded appropriately.

Southeast Alaska is made up of many small, mostly rural communities where there are few employment options. Subsistence, sport and commercial fisheries are critical to Southeast Alaska residents economic and cultural well-being. Thousands of families are dependent on the salmon resource for a living where few alternatives for employment exist. Southeast Alaska residents are honest, hard working folks who achieve a livelihood by accessing the one resource available to them.

Southeast Alaska is a rather remarkable salmon factory. Those unfamiliar with regional salmon production need to understand the magnitude of the resource for all species. The largest production in North America of pink, chum, and generally coho salmon occurs in this region. Significant returns of sockeye and chinook salmon occur as well. It is also important to understand that our fisheries are being managed consistent with all Treaty provisions. Southeast Alaska fisheries operate primarily on healthy local U.S. stocks which are the dominant portion of record salmon returns to the

northern boundary area. Salmon that happen to spawn in Canada occur only as incidental fractions in our fisheries. This is a point which distinguishes northern boundary area fisheries from fisheries in the south, particularly on the West Coast of Vancouver Island. There, successive fisheries are focused on the same stocks, thus requiring careful attention in order to sustain the resource.

The magnitude of the resource in Southeast Alaska is such that it supports a professional fishery. Those fishermen are not oriented to over-aggressive fishing patterns. They understand their futures depend both on adequate escapements and the controlled harvest of available surpluses. Both of these considerations bear on ensuring the maximum long term health of the resource. Underharvest also disadvantages salmon stocks. The fishing fleet in Alaska accepted serious restrictions during cycles of poor survivals and poor returns. With abundance up to historic levels, those fleets require access to Southeast Alaska stocks. It is not acceptable to interrupt that access due to circumstances elsewhere which are wholly unrelated to the fishery conditions in this region. Access also cannot be severely restricted due to the presence of a small fraction of salmon spawned in British Columbia.

We recognize that abundance of salmon may differ radically between regions, but as long as the stocks are not related, failures in one area should not be permitted capriciously to impact and/or obstruct the access to great salmon abundance elsewhere. It is not fair, equitable, reasonable, or acceptable to require restrictions on healthy, traditional fisheries as a consequence of resource failures in wholly distinct fisheries and stocks. The Treaty fails its initial intent and promise if it is driven by localized conservation problems with no more than an orientation to "sharing the pain". That Treaty promise was for optimizing salmon production which can occur only with the freedom to respond appropriately to fishery conditions as they occur, without reference to scarcity or abundance elsewhere and free from the perverse contamination of political or ideological agendas.

We have been asked whether unilateral fisheries management of mixed stocks is possible. The answer for this region is affirmative. Whereas it might be preferable to have a formal working relationship with Canada to address issues of mutual concern on commingled salmon stocks, the nature of Southeast Alaska and Northern British Columbia fisheries is such that unilateral management is both possible and practical. The health and well-being of the stocks can be maintained without a formally structured arrangement with Canada as occurred for the 100 years prior to the

Treaty. The fact that Alaskan fisheries are targeted on local salmon stocks, taking salmon bound for Canada incidentally only, is the key to the situation. As long as a cooperative attitude exists between professional managers on the two sides, an informal arrangement probably is preferable.

#### TREATY SUCCESSES--AND SHORTCOMINGS

From a fishermen's perspective, the Treaty has generally been successful in dealing with practical fisheries issues in the north. First, the health of resource in terms of conservation on both sides of the border has improved. Good stock conditions exist across species, there are significant harvest levels, and there are more than adequate escapements. Second, the fisheries annex arrangements have worked in terms of fisheries to everyone's benefit. Significant gains in cooperative management between the U.S. and Canada have occurred in the north. The Alaska delegation has agreed to three increases in the Canadian Area 1 troll harvest levels in the northern boundary area in order not to disrupt Canadian fishermen.

The fishery arrangements negotiated for the Alaska District 104 purse seine fishery (Noyes Island) have been successful, despite partisan negative publicity, in that the fishing regime has done precisely what it was designed to do in 1985. Most simply, from the Canadian point of view, an unrestricted District 104 fishery held the potential to impact sockeye harvests in northern British Columbia on which its fisheries depended. To the United States, this fishery represented a key to the largest pink salmon resource in North America. In the agreed solution, the United States recognized that Canada held legitimate interest in some of the major sockeye stocks passing during early July. The U.S. agreed to limit its fishery during that portion of the season in which sockeye comprised a large part of the catch, that is, prior to the arrival of large segments of the Alaska pink salmon return. Prior to statistical week 31 (July 25) the U.S. was willing to accept the costs of a limited fishery, even at the risk of losing access to pink and especially chum salmon. Beginning with Week 31, however, abundance of pink salmon increases rapidly as the sockeye distribution has passed its peak and abundance declines. Seventy-five per cent of the pink salmon harvest occurs in weeks 31, 32, and 33. Through the peak of the pink salmon return, the fishery was permitted to be abundance-driven on pinks with sockeye demonstrably incidental.

It is not at all reasonable for Canada to object to recent sockeye harvest levels in District 104. The negotiated provisions of the annex have not

been violated, there has been no re-directing of fisheries, and the involved resources of both parties are prospering both in terms of the harvest levels on each side and in terms of the escapement levels for continued production from relevant salmon stocks. In particular, Canadian sockeye escapement goals regularly are being exceeded by substantial amounts. The Noyes Island harvest levels are appropriate to the specific circumstances of the fishery both for sockeye and pink salmon. The harvest rate on passing sockeye has not increased and the harvest of pink salmon during those years of record level returns represents an integral component of the successful management of Southeast Alaska's salmon. The conduct of this fishery has satisfied the letter and the spirit of the PST in all respects.

In 1993, the bilateral northern panel negotiated and agreed to a northern boundary area chum salmon enhancement and cooperative management program that was recommended to the Commissioners for approval. Unfortunately, the approach has not been endorsed by the Canadian federal government, presumably because it is viewed as inconsistent with their political goals of restructuring Southeast Alaska fisheries and their extreme position on what inappropriately is termed 'equity'.

Understanding and recognition of key differences in the nature and status of production, fleet characteristics, and management capabilities between management jurisdictions is important in crafting cooperative approaches acceptable to both parties. In Southeast Alaska, spawning is distributed among approximately 5,000 rivers and streams and production of many stocks are at historic high levels. When harvested, these stocks frequently are mixed both within and between species. Traditional fisheries are managed in mixed-stock areas, based upon the strength of historically dominant species and stocks. In mixed-stock areas, harvest rates are constrained to provide escapement needs for important stocks and this approach typically results in subsequent fishing opportunity in near terminal and terminal areas for stronger stocks. This management has resulted in salmon production throughout Southeast Alaska which in recent years has yielded harvests and escapements at historic high levels. Continued stability in these historic fisheries remains a key goal.

#### **Equitable Sharing -- The Equity Principle**

In terms of fair sharing of the resource, or the "equity" principle of benefits equivalent to the production of salmon, the contributions by each country to the growth and production of salmon stocks throughout their

life cycles must be acknowledged in order to establish an equitable sharing of benefits. Equity, to many participants in and most casual observers of the Pacific Salmon Commission process, currently is assumed wrongly to entail a balance in the net effects of salmon interceptions. Migratory salmon which spawn in one country and rear and grow to mature adults in the other country's waters are a shared resource. Any arrangement which allots one hundred per cent of the benefits to the country in which the salmon are spawned and zero per cent to the country which contributes significantly to the conservation, growth, and production of those salmon is unrealistic and unacceptable. Yet, this is exactly what Canada and some southern U.S. interests have proposed through an "interception" balancing exercise within the Pacific Salmon Commission.

It should be noted that the Treaty does not specify that levels of interceptions should be balanced. It rather requires that the nations obtain benefits equivalent to the production of salmon from the respective waters. Production of salmon is a far more intricate process than is represented by any accounting of "interceptions". Salmon are primarily marine animals, deriving all of their economic value there. Salmon species spend much of their respective life cycles in multiple marine jurisdictions, generate real costs and effects on the interest of the "host" nations, and in fact, are produced jointly by the parties to the Treaty. Apportioning that production arbitrarily, as Canada asserts, to the location of spawning grossly and unacceptably distorts the factors and responsibilities involved in salmon production. If equity is to be addressed as a separate issue within the Treaty, that system will have to be far more sophisticated and consistent with the realities of salmon production than has been advocated by Canada.

**3. What are the main obstacles to achieving a unified United States negotiating position, and what are your specific recommendations for reaching a negotiating position?**

The main obstacle encountered in recent years prohibiting achievement of a unified U.S. negotiating position is the Southern U.S. Commissioner's approach of trying to trade away Alaskan interests in order to attempt to achieve better arrangements with Canada on southern fisheries issues.

The U.S. has been able to reach agreed positions until very recently in the Pacific Salmon Commission. The U.S. maintained agreed positions into this past year until certain non-Alaskan interests announced unilaterally that those positions were no longer wholly accepted. Subsequent difficulty in

achieving agreed U.S. positions on a range of issues derived from an orientation by non-Alaskan parties to trade away Alaskan interests in order to achieve their objectives. This attempt to link unrelated fisheries to the benefit of southern U.S. interests and the detriment of Alaskan interests represents an explicit abrogation of an agreement not to trade across fisheries boundaries which had existed in the U.S. section since the conclusion of the Treaty agreement in 1985.

The conscious decision to advocate such linking played directly into Canadian hands in terms of dividing U.S. interests north and south. It also fostered Canadian expectations that they would be successful in extorting concessions in Alaskan fisheries. It should be clear that if such an attempt at extortion were to succeed, it should be anticipated that the U.S. will see that approach as a continuing strategy from Canada. Canada has a demonstrated willingness to behave outside the bounds of conservation needs in order to attempt to achieve other political and fisheries objectives. Our recommendation for being able to achieve U.S. agreed positions is that we return to the longstanding policy of not trading across fishery regions on unrelated fisheries. This would reduce or eliminate Canada's expectation that they might succeed by abusing conservation situations. More broadly, the U.S. should take the position that northern and southern issues will be negotiated independently as was the case in achieving the 1985 Treaty.

In terms of fisheries issues, this return to a division of negotiations in the north and south, whether formal or informal, represents an approach that will be advantageous to the U.S. and ultimately to Canada. It is the most efficient and mutually advantageous route to achieving consensus within the U.S. delegation. For chinook salmon, there is clearly a need to continue northern and southern dialogue in order to achieve rehabilitation, rebuilding, and reasonable harvest balances of the chinook resource.

On issues not directly effecting specific fisheries, such as equity, it must be recognized that the U.S. had an agreed position as recently as 1993. That position rejected the simplistic and biased position espoused by Canada as unrealistic in terms of national interests and unrealistic in terms of the behavior of the salmon stocks. The U.S. alternative had suggested not attempting to quantify superficially national interests, but to focus realistically on increasing the benefits of both nations through joint actions. That position we feel was sound, and suggest that it again form the foundation for a U.S. approach to the topic of equity. That position was abandoned unilaterally by the southern U.S. under increased ideological rhetoric from Canada and shameless threats by Canada to abuse the

conservation crisis in southern waters involving ESA-listed chinook and El Nino impacted coho salmon. The Canadian "logic" was that if they can't catch as many U.S. spawned fish in the south, then Alaska must reduce in the north.

To repeat, equity should not be construed as a simplistic balancing of interceptions. It assuredly is not equitable to restrict Alaskan fisheries due to independent production difficulties in southern regions. In terms of U.S. positions on this pivotal issue, the most reasonable approach is to return to our previously agreed position as the starting point for further discussions. On this topic as well, however, differing U.S. perspectives, north and south, argue for handling this issue separately in the respective regions. In either case, a coherent negotiating position hinges on eliminating the orientation to appeasing Canadian pressures at the expense of a single element within the U.S.

**4. How might the Federal government contribute constructively to the negotiating process? Should the federal government have the authority to negotiate unilaterally, or to encourage the States and Tribes to reach a unified position?**

In my view, the federal initiative this past year to attempt to deal with parts of the Pacific Salmon Treaty were wholly counter-productive. It created an atmosphere for Canada to pursue unrealistic expectations associated with a government-to-government resolution of the issues. They developed a strident strategy of aggressive fishery stances, and an unacceptable equity position. They also stated that significant progress had to be made on equity (e.g. capitulation by the U.S. to the Canadian position) before they would cooperate on U.S. conservation concerns. Canada was attempting to achieve at the level of governments what they could not possibly achieve on the merits of their arguments within the Pacific Salmon Commission.

The most constructive act possible within the Treaty would entail the federal government removing itself from its perceived "new" role in the process, and returning the issues to the Pacific Salmon Commission forum where they appropriately belong. For people who do not recall the history of the achievement of statehood by Alaska, one of the primary driving forces behind that effort was the failure of the federal government to maintain the salmon resources in the Alaskan territory. Salmon were depressed to unacceptable levels as a consequence of federal actions,

primarily political pressures superseding biological considerations. It required in some cases in excess of 20 years to rebuild the resources once brought under state control. Any active or implied participation by the federal government in managing or affecting Alaskan salmon resources will meet spirited opposition.

When the 1985 Treaty was signed, together with the accompanying implementing legislation, a necessary condition from the point of view of Alaska for participating in this Treaty was that the federal government did not play an integral role in the decision-making process. The requirement from Alaska as well as the other U.S. participants was that those agencies and individuals who were knowledgeable in depth regarding the salmon resource in this region would be accorded the authority to reach appropriate decisions under this Treaty. Fisheries and the status of the fisheries resources would define the range of legitimate considerations under the Treaty - not a more broad forum for trading international interests with Canada. From the perspective of the fisheries under the Northern Panel, the salmon resources since the time of the Treaty have been managed and have prospered in a fashion that would meet anyone's standards for performance consistent with the conservation, optimum production, and equity principles of the Treaty. That the resource and the fisheries have not conformed to ideological imperatives of the Canadian government in Ottawa or desires for the restructuring of Alaskan fisheries should not obscure a clear view of the success and well-being of the resource on both sides of the border in the northern boundary area. In this respect, the Treaty from a fishermen's perspective has been a success. The practical fishery questions have been handled successfully, there have been no new or re-directed fisheries in Alaska, the resource and professional understandings of the managers have prevailed, and extraneous political demands have not succeeded in overriding this approach. No change in structure which would alter this balance between professional management and political considerations is acceptable to professional fishermen, we believe, on either side of the border.

The federal government should not be accorded the authority to negotiate unilaterally on any topic in the Treaty. Equity as a distinct subject should be returned to the Commission. The federal government should continue its role of attempting to foster consensus among the U.S. parties. It is our opinion that the government represented by David Colson during the time since 1985 has generally functioned well in this capacity.

The federal government should use its resources and options, including the Pelly amendment, to "encourage" Canada to behave appropriately

regarding conservation. In particular, it should help separate Endangered Species Act considerations and the Pacific Salmon Commission issues, both internally and with respect to closing an opportunity perceived by Canada to divide U.S. interests north and south. It should also reinforce with the government of Canada a North-South separation in the Commission negotiations for 1994/95. In general, the federal government should take the necessary policy actions which make clear to Canada that they can achieve satisfactory salmon arrangements only within the Treaty, that greater success is not available through political maneuvering at the level of governments. Canada's expectations now must be reduced to accepting again that those salmon issues will be resolved only in the forum established by the Treaty which brings together the greatest professional knowledge and expertise on the subjects and is sufficiently buffered from politically motivated interference.

To conclude, much has been made erroneously about the Treaty process having disintegrated. Rather, although slow in some instances, this Treaty and its Commission generally have been successful over a broad range of issues. Separable circumstances, such as ESA concerns, and a breakdown of patience and discipline by some within the U.S. delegation should not be permitted to undermine the system. That system has worked well in general and can be anticipated to continue serving a productive function as long as every discomfort encountered in the process is not allowed to trigger a superficial review for restructuring. Stability in the Pacific Salmon Treaty is now its most serious requirement for success.

Thank you for the opportunity to provide some of my views on the topic before your committees.

STATEMENT OF THEODORE G. KRONMILLER  
BEFORE THE SUBCOMMITTEES ON FISHERIES MANAGEMENT AND  
ENVIRONMENT AND NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

AUGUST 2, 1994

Distinguished Chairmen:

I am pleased to have been invited to submit this statement to the House Subcommittees on Fisheries Management and Environment and Natural Resources regarding the Pacific Salmon Treaty. In view of the recent developments with respect to implementation of the Treaty, this hearing is quite timely.

As you are aware, I was privileged to serve as the United States Chief Negotiator during the final, successful stages of the negotiations, and to represent the Administration during Senate consideration of the Treaty and Congressional consideration of the implementing legislation. For the past several years, I have, with the appropriate conflict of interest clearance from the Department of State, represented the Purse Seine Vessel Owners Association (PSVOA) of Seattle Washington, in relation to the negotiation of new annexes to the Treaty. The Association represents 275 of the 310 holders of commercial purse seine fishing licenses issued by the Washington Department of Fisheries for salmon and other food fish in State waters. The PSVOA also represents Washington State residents who harvest salmon in Alaskan waters (over 60% of the seine permit holders for Southeast Alaska are Washington residents). The Association has long been extensively involved in the management of salmon fisheries, as well as in the preservation and restoration of salmon habitat. The Executive Director of the Association, Robert Zuanich,

was an active participant in the negotiation of the Pacific Salmon Treaty and has remained closely involved with the negotiations for new annexes to the Treaty.

#### The Dispute

The U.S.-Canada Pacific Salmon Treaty, which entered into force in 1985, provides for the conservation and equitable allocation of Pacific salmon which originate in the waters of one Party and are intercepted in the waters of the other Party. Treaty annexes, which set forth the specific regimes for each intercepting fishery, have expired.

The 1993/94 negotiations within the Pacific Salmon Commission, and between high-level officials of the United States and Canadian Governments, to establish new regimes have not succeeded. Canada has maintained that U.S. interceptions are grossly excessive in relation to Canadian interceptions, and that the "equity principle" of the Treaty requires substantial short- and long-term reductions in the catches of Canadian salmon by U.S. fishermen. Canada seeks these reductions especially in one or both of two areas, northern Puget Sound (the Fraser River salmon fishery) Southeast Alaska (the "Northern Boundary Area" salmon fishery). Canada has also maintained that its Treaty obligation to contribute to the conservation of weak U.S. salmon stocks (coho and chinook) is conditioned on acceptance by the United States of Canadian proposals for the immediate and future implementation of the equity principle, by way of reduced interceptions of Canadian salmon.

The United States has replied that it does not concur with the Canadian calculation of interceptions and is not obligated by the equity principle to reduce interceptions in the manner and to the extent demanded by Canada. The United States has further responded

that Canada remains obligated by the conservation principle of the Treaty to curtail interceptions of weak U.S. salmon stocks. At length, a final U.S. proposal for the 1994 season to address the immediate management challenges has been rejected by Canada.

In charting the course for the future, the Administration and the Congress should consider carefully, not only the text of the Treaty and its accompanying Memorandum of Understanding ("MOU"), but also the official interpretation by the United States of those instruments. The interpretation is found principally in the "Letter of Submittal" of the Treaty to the President from the Secretary of State, as incorporated in the "Message from the President" to the Senate transmitting the Treaty for advice and consent. The United States interpretation is also found in testimony presented by the Administration to the House and Senate.

It was on the basis of this interpretation, of course, that the Senate gave its advice and consent, and the President ratified, the Treaty, and it was on this basis that the House and Senate approved, and the President signed, the implementing legislation. The provisions of the Treaty and MOU, as well as the interpretative statements, reflect the complexities of the issues and, more importantly, the foundation upon which the United States may and ought to assert its position in defense of its important conservation and economic interests in the affected fisheries.

A further issue is presented by the allocation among United States fishermen of that portion of the harvest made available to them pursuant to the Treaty, the MOU, and the implementing legislation. In addressing this issue, the Administration and Congress should be sensitive to the clear understandings of the affected parties throughout the negotiations and in the years following. In this statement, I shall recount for the record the nature of those understandings.

Conservation and Equity

I have referred to the two principles of the Treaty, conservation and equity. The United States and Canada are obligated by Article III, paragraph 1 (a) of the Treaty to conduct their fisheries and their enhancement programs, so as to "prevent overfishing and provide for optimum production". This obligation to provide for conservation of the fisheries is the first-stated principle in the Treaty. The second-stated is the equity principle, which is reflected in Article III, paragraph 1 (b). The Parties are to conduct their fisheries and enhancement programs, so as to "provide for each Party benefits equivalent to the production of salmon originating in its waters".

The conditions associated with implementation of the two principles of the Treaty are found in paragraph 3 of Article III:

In fulfilling their obligations . . . [with respect to conservation and equity], the Parties shall cooperate in management, research and enhancement . . . [and] shall take into account:

- (a) the desirability in most cases of reducing interceptions;
- (b) the desirability in most cases of avoiding undue disruptions of existing fisheries; and
- (c) annual variations in abundances of the stocks.

There is absolutely no support in the foregoing conditions or in any other provisions of the Treaty and MOU (nor in the U.S. interpretations thereof) for the Canadian view that the conservation obligation is conditioned on implementation of the equity principle. Also significant is the fact that there are additional factors which affect the implementation of equity, but which do not affect the implementation of conservation.

The distinction between the equity and conservation obligations is reflected in the terms of the MOU and the U.S. interpretation of it and the Treaty. In the MOU, the

Parties stated their understanding that the data on salmon production and interceptions would be imprecise, that equity could be subject to differing methods of calculation, and that, therefore, "it would be some time before the Commission [could] develop programs to implement the provisions of Article III, paragraph 1 (b) [equity] in a complete and comprehensive manner." There is no statement in the MOU on the conservation principle in Article III, paragraph 1 (a) which corresponds to the understanding with respect to the implementation of equity.

In the short term, according to the MOU, the Parties are to "ensure that the annual fishery regimes and understandings regarding enhancement are developed in an equitable manner, taking into account the principle outlined in Article III 1(b) [equity]." Relevant to this process are "changes in the benefits flowing to each of the Parties through alteration of fishing patterns, conservation actions, or as the result of changes in abundance of the runs." Thus, the development of equitable allocations is premised upon certain factors, including actions to conserve the fisheries. Of course, the reverse is not true; the implementation of equity is not a factor upon which conservation actions are to be based.

In the longer term, if an equity imbalance is found, "it is expected that the Parties would develop a phased program to eliminate the inequity within a specified time period, taking into account the provisions of Article III, paragraph 3." The "correction of imbalances is a national responsibility and may involve differential fishery adjustments or enhancement projects on a regional basis within either country." The Party with the advantage is to submit appropriate proposals for rectification of an inequity, and the Commission is to discuss them. Agreed measures are to be reflected in the fishery regimes and in coordinated enhancement planning "in ensuing years".

There is nothing in the MOU or the Treaty to suggest that conservation actions may be put on hold by one Party to the detriment of the fish stocks of the other Party, pending the development and implementation of long-term equity adjustments. Unfortunately, Canada does not appear to recognize this reality, and following a public declaration of intent, is conducting fisheries on a unilateral basis, not only to the advantage of Canada, but also to the disadvantage of the United States.

Notably, for the first time in history, the National Marine Fisheries Service, acting under authority of the Magnuson Fishery Conservation and Management Act, has closed the ocean coho salmon fisheries for the entire 1994 season. Washington and Oregon have also closed adjacent State waters to fishing. Canada, by stark contrast, is conducting intensive fisheries off the coast of British Columbia, with the express purpose and direct effect of taking U.S.-origin stocks listed under the Endangered Species Act. In my view, this action by Canada violates the conservation provision of the Treaty and, I should add, provides a legal basis upon which the United States might choose to impose trade sanctions against Canada pursuant to the Pelly Amendment.

It is important to remember that the equity principle set forth in the Treaty finds no counterpart in the otherwise prevailing rules of international fisheries law. The Law of the Sea Treaty, in Article 66, may be seen to be reflective of the rules of international law that apply generally to the conservation and management of anadromous fish stocks. No equity principle is found in that or any other applicable provision of the fisheries articles of the Law of the Sea Treaty. With respect to the kind of circumstances that prevail in the U.S.-Canada context, that instrument provides: "In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall co-operate with the State of

origin with regard to the conservation and management of such stocks." The obligation to cooperate in the conservation of the stocks is quite clear.

Thus, in the absence of the Pacific Salmon Treaty, Canada would lack a basis in international law to demand equity in the management of intercepting salmon fisheries, but would be obligated, nonetheless, to cooperate with the United States in the conservation of U.S.-origin salmon.<sup>1</sup> It should be understood, consequently, that although Canada behaves menacingly from time-to-time on the subject of Pacific salmon interceptions, its national interest is very likely to deter a decision that could lead to a collapse of the Treaty. The recent Canadian retreat from the imposition of "transit fees" on U.S. vessels in the Inside Passage is evidence of an unwillingness to put too much pressure on the Treaty process.

#### The Fraser River Salmon Harvest in Washington State Waters

Salmon which spawn in the Fraser River north of the U.S.-Canada border must migrate through U.S. internal waters. This has placed the United States Government, the State of Washington, and the tribal governments in a critically important position in the conservation and management of Fraser River salmon.

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<sup>1</sup> I note for the record that I chaired the policy review of then Law of the Sea Treaty at the outset of the Reagan Administration, when I served as Deputy Assistant Secretary of State and Ambassador for Oceans and Fisheries Affairs. Prior to that, I was privileged to serve as Majority Counsel to the House Subcommittees on Oceanography and Fisheries and Wildlife Conservation and the Environment under the chairmanship of then Congressman John Breaux, who took a special interest in the Law of the Sea negotiations.

I believe that our policy makers must carefully consider the history of Fraser River salmon conservation and allocation, if the United States is to arrive at a fair and reasonable negotiating position for a future regime, and is to have any real prospect of contending successfully with the Canadian strategy and tactics. There are very important lessons to be learned. The danger is, of course, that in failing to recognize where we have been correct or in error, we will miss important opportunities and make otherwise avoidable mistakes.

The Fraser River Convention of 1930, which was superceded by the Pacific Salmon Treaty, provided that, not only the conservation and management burdens, but also the harvest benefits, should be shared equally between the United States and Canada. This accorded with the fact that the U.S. made large commitments of tax dollars to restoration, management, and enhancement of the stocks and maintained conservation restrictions on domestic commercial and tribal fisheries. However, by increasingly prosecuting fisheries outside the Convention area, Canada succeeded in reducing the U.S. share to well below 50%. The United States paid a high price for its failure to insist that Canada abandon a strategy that effectively undermined our right to an equal share of the resource.

Under the Pacific Salmon Treaty, the United States accepted a much reduced share of the Fraser River salmon harvests. In the first four years of the new regime, 1985-1988, the Fraser River Annex provided the U.S. with 27.1% of the sockeye salmon total allowable catch ("TAC") and 31.3% of the pink salmon TAC. In the second four years, 1989-1992, the Annex provided the U.S. with 26.1% of the sockeye TAC and 25.7 % of the pink TAC, based on preliminary expectations of the TAC, and subject to maximum aggregate catches of 7.0 million sockeye and 7.2 million pinks.

However, so great was the success of restoration and conservation that the actual runs of sockeye during that eight-year period far exceeded expectations. The ironic consequence for the United States was that the aggregate catch limit produced a share of only 16.4% of the TAC for U.S. fishermen. Catches of pinks by the U.S. did not reach the ceiling for that species. Thus, the U.S. harvest of the far more valuable of the two species fell much below the share anticipated by the parties in the negotiation of the Treaty and failed to reflect historical and continuing contributions to the fisheries by the United States. In short, we failed to negotiate a management scheme that would ensure our enjoyment of the share to which we were entitled.

That was not the only disappointment. The U.S. had agreed to reduced harvests of Fraser River salmon under the Pacific Salmon Treaty, particularly for the second four-year period, principally to secure a reduction of Canadian interceptions of Washington-bound salmon. However, after winning this U.S. concession in the negotiations, Canada did not curtail its fisheries on Pacific Northwest salmon stocks of particular conservation concern to the United States. Rather, Canada established new commercial and recreational fisheries that were not subject to the effective constraints of the Treaty annexes. Therefore, the U.S. paid an economic price all out of proportion to the benefits it actually received in relation to limits on Canadian interceptions of U.S.-origin salmon, and suffered a further economic loss that paralleled the cost associated with the earlier Canadian strategy of fishing outside the Fraser River Convention area. We had failed to learn from history that Canada would exploit any possible loophole to our great disadvantage.

The U.S. also continued to sustain a management burden which was disproportionate to the harvest of Fraser River salmon and the hoped-for, but not delivered, Canadian restraint in the interception of U.S. salmon. The U.S. provided more

than one-half of the funding for the Pacific Salmon Commission. Taxpayer-supported Washington State and federal enforcement, combined with well-managed, pollution-free waters, provided safe passage for the millions of Fraser salmon during their migrations.

It is very important to recognize that **Fraser River salmon spend 60% of their life cycles in United States waters**. This is a point that we failed to assert with sufficient forcefulness in the negotiation of the original Treaty annexes.

In 1992, the Pacific Salmon Commission undertook to develop a new regime for Fraser River salmon and to address various other fisheries issues, including those involving coho and chinook. Unfortunately, Canada maintained the objective of severely restricting U.S. harvests of Fraser River salmon, and showed little interest in curtailing Canadian interceptions of U.S. salmon, coho in particular. At the same time, Canada sought to negotiate new constraints on Alaskan salmon fisheries, although the relevant annexes were not to expire until 1994.

The strategy of resisting constraints on coho interceptions and pressuring for early concessions in Alaskan fisheries led to a collapse of the effort to secure a long-term regime for the Fraser salmon fisheries and Canadian interceptions of coho; those issues were settled for a single year, only. No results were achieved with respect to the Alaskan fisheries.

The single substantive achievement by the United States in the 1992/93 negotiations was having won renewed Canadian acceptance of an essentially abundance-based approach to the sharing of Fraser River salmon harvests. For the 1993 regime, as for the original four-year regime of the Treaty, the United States share was effectively constrained, not by artificial catch ceilings, but by percentages of the catch. This reflected

the provision of Article III, paragraph 3 (c) of the Treaty establishing that annual variations in abundance should be taken into account, thereby providing a basis upon which to share the harvest in a manner that would reasonably reflect contributions to the successful conservation of the salmon stocks. A constraining ceiling, by its very nature, would preclude a full reward for conservation and management contributions leading to increased abundances.

Specifically, the regime for the Fraser River salmon in 1993 provided for a U.S. harvest share of 20% of the forecast sockeye TAC, and then 10% and 5% of higher TAC levels. A record run size--which could not have occurred in the absence of major U.S. contributions to the restoration and continued health of the fisheries--produced a U.S. harvest goal of 2.763 million fish in Washington State waters. As anticipated, an artificial catch ceiling of 2.806 million fish did not constrain the actual catch, which was for various reasons, 2.692 million fish.

The run size in 1993 was so large that the actual share of the harvest enjoyed by the U.S. was only 15.8% of the TAC. Thus, although the regime was an advance for the United States over that provided in the previous four years, the actual, resulting harvest level was far from fair in relation to U.S. contributions to the fisheries.

Several statistics are worthy of close attention. Average annual run sizes for the four-year cycle prior to the Treaty were slightly over 8 million. During the first four-year regime, the annual average run sizes increased to over 10 million. The second four-year average exceeded 12 million. The run for 1993 reached 22.5 million, the highest level on this cycle since 1913, when the run size was approximately 40 million--and the Hell's Gate rock slide decimated the fisheries for decades to follow. The annual average run sizes for the period, 1994-1998, are estimated at 21.4 million.

I think it fair to say that the 1993/1994 negotiations were a failure on an unprecedented scale. Canada intervened at the highest levels of our government, in the effort to engineer a political result that could not be achieved in the Commission and could not be reconciled with the rules laid down by the Treaty and the MOU. The Canadians threatened a fish war and then imposed illegal transit fees on our vessels. To the great credit of our government, the Canadian tactics yielded no concessions. On the contrary, the Administration and the Congress presented a strong, unified front on the issue of fees that compelled the Canadians to abandon that tactic. And, we did not flinch, when confronted by threats of unilateral management aimed at the deliberate overfishing of our weak salmon stocks. In the end, Canada returned to the negotiating table.

To its very great discredit, however, the U.S. Government ultimately resorted to secret negotiations and to offers of wholly unwarranted concessions, for which, of course, no concurrence was sought from the most directly affected parties. (I am attaching to this statement a copy of my recent letter on this subject to the Department of Commerce official who has been assigned lead responsibility on the U.S. side for the negotiations with Canada.) The most pernicious element of the U.S. concession package with respect to the Fraser River was the intent to inflict the entire cost on one sector--the non-Indian fishermen. Fortunately, Canada rejected the U.S. offer. Had the case been otherwise, a long but fragile history of cooperation, based on equal sharing of benefits and burdens between tribal and non-tribal fishermen, would have been utterly shattered. The consequences would have been severe, to say the least.

In this instance, as in others, history holds an important lesson that has been ignored. It should be remembered that, at a critical juncture of the original Treaty negotiations, the U.S. offered concessions that had not been accepted by members of its

delegation. The result was a political disaster, pure and simple. Although the Treaty text was initialled by the U.S. and Canadian negotiators, the United States Government declined to sign. The reason was that, upon discovering secret concessions had been made by our negotiator, members of the U.S. Delegation protested to a key Senator, who responded by promising to defeat any effort by the Administration to win advice and consent to ratification.<sup>2</sup>

The Canadians were genuinely enraged by the refusal of the U.S. to sign the initialled Treaty, but realizing that even a renegotiated agreement would be in their national interest, they consented to resumed talks. After more than two years of hard bargaining and at least two ruptures in the negotiations, as well as repeated Canadian threats of a fish war, the necessary remedial concessions were won by the U.S. side and the Treaty was signed and ratified. I stress that this result was only possible, because the U.S. Government adopted for the resumed negotiations an open, consensus-driven approach to the development and presentation of concessions (and demands). No position was put forward that was regarded by any member of the delegation as being unfair or unwise. There were, as diplomacy sometimes dictated, private meetings of the negotiators, but the U.S. offered no concessions that had not been cleared in advance by the entire delegation.

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<sup>2</sup> It was at this stage, that I was instructed to take the lead in an effort to renegotiate the Treaty. Later, following high-level interventions by Canada with the United States Government, the Honorable Edward Derwinski was assigned the task of providing political leadership to the U.S. Delegation. His outstanding contributions to the process, including most importantly, the development of consensus in our delegation and the communication to Canada of the limits of U.S. flexibility, were critical to the successful conclusion of the negotiations. Accordingly, our two signatures appear for the United States on the Treaty.

I am concerned that, if the present Administration offers and the Canadians accept, concessions developed and presented in the absence of consultation with, and consent from, the affected U.S. groups, the Treaty process will be destroyed by domestic political dissent. I do not feel it appropriate to describe the roadmap as to how the termination of the Treaty could be compelled. However, it should be evident enough that the legal and political means exist to achieve that end.

As the United States Government approaches future negotiations, it should take into account several key facts. The Fraser River is healthy and productive; it is Canada's goal to have its sockeye and pink salmon runs grow stronger over the years; and this can only happen with the cooperation of the United States. The greatly increased abundance of Fraser sockeye, resulting from the success of the U.S.-Canada rebuilding program, presents a clear case for an increased U.S. share. Strictly limiting the U.S. fishery to a set catch, irrespective of run size, subverts U.S. rights under the Treaty; frustrates the preservation of the historical fishing pattern, by tribal and non-tribal fishermen by removing flexibility from Washington fisheries managers to achieve domestic allocation goals and respond to unanticipated catches in Alaska; and precludes U.S. fishermen and processors from participating fairly in the benefits of fisheries to which the United States has contributed, and should continue to contribute, so productively.

The Canadians, on the other hand, take the view that their goal of greatly restricting the U.S. harvest of Fraser River salmon is supported by the equity principle. Canada behaves as though it believes that the language of that Article, "each Party [is] to receive benefits equivalent to production of salmon originating in its waters", should be interpreted to mean that Canada is entitled to harvest virtually all the available production from each of its rivers.

Canada's stance simply ignores the reality that the extensive intermingling of Canadian and U.S. stocks, and the long migrations and residency of Canada-bound salmon in U.S. waters, makes it impossible to assure that each Party will harvest all of its own salmon and none of the salmon of the other Party. Thus, Article III does not provide that, "each Party [is] to receive the production of salmon originating in its waters", but that each party is to receive "benefits equivalent to" that production. Because the complete elimination of interceptions is unachievable, the equity principle must necessarily encompass the consideration of other factors, such as enhancement, enforcement, and other measures taken by the intercepting party to the benefit of the state of origin. Moreover, in the case of the increasingly abundant Fraser salmon fisheries, the reduction of interceptions would be unfairly damaging to our historical U.S. participants. The Treaty, MOU, and U.S. interpretations of them, make it clear that in the case of historical fisheries, such as those of the U.S. on the Fraser River salmon, the reduction of interceptions is to receive no greater emphasis than the avoidance of an undue disruption of the harvests. Moreover, annual variations of abundance are to be taken into account--not ignored, as the Canadians would prefer.

It should be emphasized that, if the Canadian view were to prevail, there would be no economic or political basis for the United States to continue its expenditures of financial resources for the benefit of Fraser salmon stocks, nor to constrain economic activities that could adversely affect the Fraser salmon runs. Conservation efforts by the United States would go unrecognized. No doubt, the U.S. would be pressured by fiscal constraints and political realities to reorder its priorities for the purpose of achieving other productive economic, social, and environmental objectives than the continued maintenance of the Fraser fisheries for the enjoyment of Canadian fishermen. Canada fails to recognize--or acknowledge--this fatal flaw in its position.

"Equity" has not yet been calculated. However, if a future calculation of the total production of the Canadian and U.S. rivers shows the U.S. to owe compensation to Canada for a deficit of benefits, then in accordance with the Treaty, the U.S. may respond in a variety of ways. This may involve reductions of interceptions, where practicable and fair, and enhancements or other actions, where reasonable and necessary.

Specifically, for the near term, the United States should insist upon a new, four-year, Fraser River Annex, based on a marginal sharing structure which provides sockeye harvest levels in Washington State waters equal to 22% of the forecast TAC and 16.5% of higher TAC levels. The 22% figure represents the middle ground between the percentage share received by the United States during the first and second four-year regimes. The 16.5% figure represents the share received during the second four-year regime. For pink salmon, the new Annex should provide the United States with a 25% share.

#### Accounting for Fraser River Salmon Caught in Alaskan Waters

In negotiating the original Fraser annex to the Treaty, the U.S. insisted on language specifying that "all fisheries that harvest Fraser River sockeye and pink salmon" shall be taken into account in determining allowable catch levels. The concern was that Canadian fisheries operating outside the Fraser River Panel management area would persist in harvesting substantial numbers of Fraser salmon which, in the absence of such language, would not be considered part of the Canadian shares.

However, while the U.S. was required to meet its Indian allocation requirements from its share of the TAC, Canada was permitted by the Fraser Annex to maintain an "aboriginal" harvest outside the TAC calculation. This allowed Canada to side-step an

issue which was volatile at the time of the Treaty negotiations, but which has since been resolved.

In the 1992/93 and 1993/94 negotiations, based on the above-quoted language that had a very different intent when originally negotiated, Canada pressured the U.S. to count the Fraser sockeye harvested in Alaska against the 1989-1992 seven million ceiling on the U.S. Fraser harvest. Canada relented on this point only with great reluctance. Notably, Canada was not prepared to make substantial concessions regarding the accounting for its own, ever-expanding recreational catch of U.S. coho and chinook off the west coast of Vancouver Island.

#### The Management of U.S. Salmon Fisheries in the Northern Boundary Area

In the negotiations on the original annexes to the Treaty, Canada made a major issue of the small number of interceptions of Fraser River sockeye by U.S. fishermen (many of whom are Washington residents) in the Northern Boundary Area. In effect, Canada maintained that the massive U.S. pink salmon fishery should be managed to reduce those interceptions. The United States disagreed, and its position was reflected in the outcome of the Treaty negotiations.

It is important that the Letter of Submittal, referred to earlier in my statement, contains language clearly enunciating the U.S. interpretation of the Treaty as it affects the Northern Island Boundary Area. As noted in the Letter of Submittal, fishing in that area has characteristics which make management difficult. Stocks of both United States and Canadian origin broadly intermingle on the fishing grounds. The Treaty reflects a recognition of these facts. The Letter of Submittal addresses the matter directly and in detail.

In recent years, the problem has been aggravated by large population increases and changing environmental conditions affecting migratory patterns, salmon from both countries have flooded into the Northern Boundary Area. More to the point, high numbers of Canadian-origin sockeye are appearing in the Noyes Island fishery at a time when southeastern Alaskan salmon production is at record levels--65 million salmon in 1993. Similarly, Canadian net and troll fisheries are harvesting ever-increasing catches of Alaskan pink salmon, incidentally to increased harvests of Canadian fish.

In the 1992/93 and 1993/94 negotiations, the Canadians again urged that the pink fishery be managed to reduce interceptions of sockeye. In the 1992/93 talks, the United States noted that Canada had not addressed its massive interceptions of pink salmon originating in Alaska, and no change was made to the management of the Noyes Island pink salmon fishery. In the 1993/1994 negotiations, the U.S. offered a minor adjustment, but Canada rejected the concession as being wholly inadequate.

There is, in my opinion, no justification in the Treaty or the MOU for any substantial concession by the United States on this issue in future negotiations. We should stand by the reasoning set forth in the Letter of Submittal, and thus continue to rely on our correct interpretation of the relevant provisions of the Treaty.

#### Closing Observations

I have pointed out that, in the negotiations that led to the conclusion of the Treaty, the United States agreed to trade a portion of the Fraser River salmon for a reduction in the Canadian catch of U.S. coho. Again, in the 1992/93 and 1993/94 negotiations, the U.S. adopted this approach.

There is no evidence that the implemented trade-offs advanced U.S. coho interests in any significant way. Prior to the Treaty, Canada took some 2 million coho off the West Coast of Vancouver Island; that fell to 1.8 million until 1993. The limit on Canadian interceptions last year was 1.7 million coho, but the actual catch was under 1 million. Despite the greatly reduced Canadian interceptions, there was no appreciable improvement in the Washington coho fisheries. This meant that the United States neither fully benefited from the large Fraser sockeye runs, nor gained materially from lower Canadian interceptions of coho.

From the experience of the 1993 fisheries, the inescapable conclusion is that reducing Canadian interceptions will not solve the U.S. coho problem. Reports from the 1994 season confirm this. Trading sockeye for coho will simply throw away fish upon which Washington fishermen depend to support their families and their communities. This must be avoided in future negotiations.

The United States economy and the local conditions in Washington State do not allow the luxury of costly concessions to Canada in the salmon negotiations. The abundance-based management provision of the Treaty, the history of investments by U.S. taxpayers and of participation by U.S. fishermen in the Fraser River salmon fisheries, and the interest in maintaining an incentive for conservation of the salmon stocks and protection of their habitat, are not compatible with Canadian demands for a greater restriction on U.S. harvests.

There is no justification for reducing our harvests in fisheries experiencing record salmon populations to which U.S. contributions have been longstanding, substantial, and indispensable. Constraints on harvests have been endured in the lean years, and now, all

fishermen should share in an equitable way the benefits of what must be regarded as a rare environmental success story. By the same token, these fisheries have not been a cause of the problems suffered by other salmon populations (including those listed under the Endangered Species Act), and should not be used as trading stock for attempts at finding solutions. In the particular case of coho, the experience of 1993 shows that any politically realistic constraint on Canada will have no material effect on harvests in the United States.

The Fraser River and Northern Boundary Area salmon harvests provide Washington with some of its most valuable commercial fisheries. Nearly 2000 Washington residents (exclusive of tribal commercial fishermen) hold commercial fishing permits for salmon fisheries in the waters of Puget Sound and southeastern Alaska. These fisheries are subject to the terms of the Treaty. In addition, thousands of Washington residents crew on vessels operated by these permit holders. Over 50 salmon processing companies with corporate offices in Washington rely on these fisheries, as do hundreds of other Washington businesses.

Ill-considered trade-offs or corrections of "inequity", as demanded by Canada, resulting in a reduction of the U.S. fisheries on the Fraser River salmon would be felt through the Pacific Northwest economy. Any curtailment of the Alaskan fisheries, in an attempt to reduce interceptions of Canadian sockeye, would sacrifice the harvest of massive quantities of U.S. salmon, but actually allow the escape of a relatively small number of Canadian fish. This, too, could have a severe impact on Washington residents who fish in Alaskan waters.

I feel I must repeat the fundamental lesson to be learned from the history of the Pacific Salmon Treaty negotiations. The Treaty was successfully concluded, only after the United States Delegation committed itself to a patient process of developing negotiating

positions by consensus. Although this was not a guarantee against mistakes--such as the ceilings on the U.S. catch of Fraser River salmon--it was indispensable to the creation of an atmosphere of mutual respect and trust among domestic groups with widely divergent, and often conflicting, interests. The consensus approach also deprived Canada of the opportunity of playing U.S. groups off against one another, and thus led to a Treaty that could be accepted by all affected U.S. interests.

It is my firm belief that negotiations secretly planned and conducted by the United States, in a frantic effort to respond to intense Canadian political pressures, must inevitably doom the Treaty process. Proposals to trade away the livelihoods of some fishermen to serve the interests of others should be abandoned, as they are both unfair and counterproductive. Accordingly, I urge that the Administration adopt, and the Congress support, a policy of fairness, patience, openness, and consensus. In dealing with Canada, U.S. representatives should keep clearly in mind and resolutely assert those protections for United States interests that were won in hard bargaining with Canada in the course of Treaty negotiations.

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July 26, 1994

The Honorable Douglas K. Hall  
Department of Commerce  
14th and Constitution Ave., N.W.  
Washington, D.C. 20230

Dear Doug:

Subsequent to our meeting last week, my client, Robert Zuanich, Executive Director of Purse Seine Vessel Owners Association, had the opportunity to speak with Mr. Robert Turner, Director of the Washington Department of Fish and Wildlife. Mr. Turner advised that, during a meeting with Canadian officials on July 14, 1994, the U.S. put a new offer on the table for settlement of certain 1994 harvest arrangements under the Pacific Salmon Treaty. As we now understand the offer, it included a U.S. harvest of Fraser River sockeye in Washington waters to be calculated according to the U.S.-Canada allocation in the 1993 agreement, less 300,000 fish. Applying the currently expected 1994 total allowable catch of 13.2 million to the 1993 harvest formula, the U.S. fishery in 1994 would catch approximately 2.6 million sockeye. It seems that the 300,000 fish reduction from that amount would come solely from the non-Indian share of the catch.

I was staggered to receive a report that the U.S. had retreated from its long-standing and fully supportable proposal for the 1994 allocation, and moreover, had apparently done so at the cost of the commercial sector, alone. Until the July 14 meeting, U.S. has maintained equal sharing, consistent with understandings of the rights of treaty Indians and all-citizen fishers under U.S. v. Washington (a provision in 1993 for a minor adjustment in favor of the treaty Indians had no practical effect).

Since 1986, which marked the start of equal sharing in the Pacific Salmon Commission process, U.S. Indian and non-Indian fishermen have harvested over 15 million sockeye, with a current cumulative catch imbalance of only 60,000 fish. This has represented a remarkably even division of catch by these two historical participants in the fishery.

I find it deeply disturbing that the allocation proposal put forth on July 14 would permit the treaty Indian fishery to exceed its 50% share. Were this proposal to be accepted by Canada and implemented by the United States, the equitable linkage of tribal and non-tribal fisheries would be destroyed, and the prevailing stability of that relationship would be upset. There would be immediate and intense controversy, and a risk of confrontations on the fishing grounds, in the courtroom, and among the fishing communities throughout Washington State.

The claimed benefit to the State of Washington from this offer would be a reduction of the 1994 coho harvest off the West Coast of Vancouver Island. I am strongly of the opinion that any burden associated with achieving such a benefit should be shared equally by tribal and non-tribal fishers. I do not believe that tribes have a harvest right or benefit which is paramount to their equal conservation obligation as joint managers of Washington's salmon resource. I add that I do not believe that any trade-

off of one fishery interest to serve another is wise policy, as it can only contribute to divisions among our fishers and their communities.

I must also note that, throughout the negotiations leading up to the Treaty and its implementing legislation, all parties agreed that it was necessary to guarantee equal catch arrangements between tribal and non-tribal fishers for the Fraser River sockeye and pink salmon. Equal sharing of Fraser salmon has been an article of faith in the fishing industry.

In closing, I must I emphatically state that I cannot think of a more pernicious proposal than that for unequal sharing of what must be regarded as very unwelcome sacrifices. I am deeply concerned that the Treaty process cannot long withstand the assaults that must surely ensue, in the event that the Administration decides to maintain its present course, whether that is to apply to 1994 or to any future years. Having served as United States Chief Negotiator in the final, successful rounds of negotiations on the Treaty, I can assure you that the Administration must respect the long-held understandings of the participants, or face a political storm of very great consequence.

With best regards,

Sincerely,



Theodore G. Kronmiller

STATEMENT BY HONORABLE THEODORE G. KRONMILLER  
BEFORE THE SENATE COMMITTEE ON  
FOREIGN RELATIONS

February 22, 1985

Mr. Chairman:

It is a privilege to appear before the Committee to testify on behalf of the Administration on the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, including Annexes and a Memorandum of Understanding. It was my honor to lead the United States Delegation for the past two years. This Treaty, signed by the United States and Canada at Ottawa on January 28, 1985, will enable our two countries to conserve the salmon resource, to rebuild depressed stocks, to increase enhancement, to improve research, and to allocate the harvests fairly.

International cooperation is essential to the effective management of Pacific salmon. Conservation of salmon stocks that migrate across state, tribal, and national boundaries requires close coordination among all management entities. In the absence of cooperation, not only is conservation impossible, but also enhancement opportunities must be foregone, research is frustrated, and fair allocations cannot be achieved. The Treaty, with the implementing legislation, and the settlement of related litigation, will resolve these difficulties.

Achieving the Treaty, the legislation, and the settlement was extremely difficult. Despite a fundamental mutuality of interest between the United States and Canada in conservation and management of Pacific salmon, agreement on a treaty could not be achieved for fifteen years. Throughout that period, fishermen on both sides of the border suffered, as many stocks declined, allocations were distorted, and enhancement and research were limited.

On the U.S. side, the diversity of interests compounded complex bilateral issues. A balance had to be struck among those interests across the full range of questions facing the two national governments.

The United States Government was determined to respond fairly to the concerns of every domestic management entity and user group. Consequently, virtually every negotiating position tendered on behalf of the United States was deliberated by the entire U.S. Delegation and was approved by consensus of its members. This process taxed the energies of the Delegation, but ensured the fairest possible accommodation of affected interests. The Delegation deserves high praise for its commitment to achieving a result that neither unfairly advantaged, nor unfairly disadvantaged, any group. Counselor Derwinski, who represented the Secretary of State, and acted as a conciliator in the Delegation and as the principal political link to the Canadian Government, deserves special thanks. His contribution was

critical to our success. In the end, Canada was able to accept a treaty that won the endorsement of all segments of the U.S. Delegation.

It must be emphasized, however, that the Treaty is only one of three products of a broader domestic negotiation. The second is the implementing legislation, and the third is the settlement of certain accounting issues between treaty Indian tribes and the State of Alaska. By its very nature, any international treaty is not intended to resolve all domestic issues. This Treaty, with its many, complex, management facets, leaves an array of internal issues to be resolved by other devices. Implementing legislation must address the fundamental question of allocation of resources and responsibilities among the interested federal agencies, states, treaty Indian tribes, and commercial and recreational fishermen. Settlement of the "All Citizens" lawsuit is essential to the resolution of the accounting issue as it relates to certain Alaskan chinook harvests. Because of the important relationships between these three matters, the U.S. Delegation agreed that the Treaty, the legislation, and the settlement should all become effective contemporaneously. I am pleased to report that we are in a position to meet that goal.

I will discuss only briefly the operation of the Treaty, including the so-called equity principle, and the various fishery regimes established by the treaty. A more elaborate description is contained in the report of the Department of State on the

Treaty, a report which was reviewed and approved by the United States Delegation.

The Treaty establishes a bilateral Commission to manage "intercepting" salmon fisheries, that is, the fisheries of one nation that harvest fish which spawn in the waters of the other. Three regional Panels are to provide technical and regulatory advice and assistance to the Commission and the Parties.

The Treaty also establishes initial fishery management regimes, which prescribe agreed measures for conservation, allocation, enhancement, and research. The regimes annexed to the Treaty address:

- transboundary rivers;
- the northern boundary area;
- chinook salmon;
- Fraser River sockeye and pink salmon;
- southern coho; and
- southern chum.

#### STRUCTURE

The Commission is the principal decision-making body to be established under the Treaty. The Commission is to have a Canadian section and a United States section. The approval of both will be required for Commission recommendations and decisions. Each section will be composed of up to four

Commissioners and a like number of alternates. Each Party will pay for half of the joint expenses of the Commission, and for the expenses of its own section. The Commission will receive conservation and management information and recommendations from Panels established by annexes to the Treaty, including the Northern, Southern, and Fraser River Panels. The Panels will consider information from the Parties and from the Joint Technical Committees established pursuant to Annex IV. The Parties will receive recommendations for fishery regimes from the Commission. Each Party will promulgate and enforce regulations to implement the agreed regimes. In the case of the fisheries for Fraser River sockeye and pink salmon, in-season regulatory authority will be exercised by the Fraser River Panel.

#### THE EQUITY PRINCIPLE

Two main principles govern the Treaty. As set out in Article III(1), they are to conduct fisheries and enhancement programs to prevent overfishing and provide for optimum production, and to "provide for each Party to receive benefits equivalent to the production of salmon originating in its waters"--the equity principle. The Parties harbor no illusions that the equity principle will be simple to quantify. In adopting this provision, the Parties, by Memorandum of Understanding to the Treaty, expressly recognize that levels of interceptions will vary annually and over time, that data on the extent of interceptions in some areas are imprecise, and that it

would not be immediately possible to determine with certainty the total production of salmon from the rivers of each country. The Parties also recognize that methods differ for evaluating benefits accruing within each country. For these reasons, the Parties anticipate that it would be some time before the Commission could discern that a trend had developed, and ascertain the value of benefits due each Party under Article III(1)(b).

The Commission will have the complex task of developing programs to address any inequity and provide for any appropriate adjustment to implement the provisions of Article III(1)(b). The Treaty establishes three precepts that are to guide the Parties in their implementation of the principles of conservation and equity. Initially, Article III(3)(a) requires the Commission, when considering equity adjustments, to recognize the desirability of reducing interceptions. This precept recognizes that excessively high interception rates may result in conservation problems and reduce incentives to enhance resource production. However, such reductions cannot be mandated in all cases, because they will not always be fair or feasible. In the northern boundary area, for example, since stocks are of both Canadian and United States origin and cannot be segregated, the United States fishery targeted on United States-origin salmon must involve an incidental catch Canadian-origin sockeye. Similarly, the Canadian fishery for Canadian-origin sockeye and pink salmon intercepts substantial numbers of U.S. pink salmon.

A reduction in interception levels would preclude a Party from targeting on its own stocks. Plainly, this would be contrary to the Parties' objective.

Therefore, to balance the concern with reducing interceptions, Article III(3)(b) further instructs the Commission to consider a second important concept: the desirability of avoiding undue disruption of existing fisheries. This protects several United States fisheries from undue social or economic dislocation as a result of equity adjustments. In the northern boundary area, the example cited historic United States fisheries targeting on United States stocks could not be shut down in order to reduce interceptions. In the case of the Fraser River, a fishery developed and managed jointly by the Parties since the 1930's, Canada affirms that it has no intention of closing down a historic United States fishery. Article III(3)(b) provides these fisheries an assurance that the Commission will seek to avoid the social and economic dislocations of major adjustments.

Finally, Article III(3)(c) exhorts the Commission, when performing equity calculations, to note that seasonal variations in stocks are anticipated, and therefore it is necessary to view equity over the long term, based upon demonstrable trends, rather than on short-term fluctuations.

The United States section of the Commission has the responsibility for developing proposals to correct equity imbalances determined to favor the United States. Imbalances

should be addressed where possible through enhancement programs, rather than through adjusting established fisheries. It must be emphasized that equity in allocations is a national obligation and must be dealt with on the national, not regional, level.

#### CHINOOK FISHERY

The severe decline in many naturally spawning chinook stocks was one of the principal driving forces behind the negotiation of the Treaty. The chinook resource that is the subject of this Treaty migrates from the Washington and Oregon coasts into and through Canada and Alaska. Restraints on Canadian and United States fishermen are required in order to permit rebuilding of the depressed stocks. Annex IV provides for a sharing of the burden of restrictions, while avoiding or mitigating economic dislocation.

The Annex provides for chinook harvest ceilings for 1985 and 1986 for particular areas, as follows:

##### For the United States:

Southeast Alaska (all gear)	263,000
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##### For Canada:

Northern and Central British Columbia (all gear)	263,000
West Coast of Vancouver Island (troll)	360,000
Strait of Georgia (sport and troll)	275,000

The Commission is to establish the ceilings necessary to meet the rebuilding schedule set out Annex IV, Chapter 3. At the end of the rebuilding, by 1998, the Commission is to set ceilings that maintain optimum productivity and provide for fair internal allocations. The Parties are to share the benefits of coastwide rebuilding and enhancement, consistent with such internal allocation determinations and with the provisions of the Treaty. For the United States, pursuant to a stipulation between Alaska, Oregon, Washington, and certain treaty Indian tribes, domestic allocations will be determined by votes of the U.S. section of the Commission.

#### THE FRASER RIVER REGIME

Currently, the Fraser River Sockeye and pink Salmon fisheries are governed by the Convention for the Protection, Preservation, and Extension of the Salmon Fishery of the River System, signed at Washington May 26, 1930, entered into force July 28, 1937, as amended (Fraser River Convention). The Convention will be superseded by the new Treaty. Under the Pacific Salmon Treaty, the Fraser River Panel will participate directly in the pre-season and in-season management of the fishery.

The new regime differs from the Fraser River Convention in two significant ways. First, the Fraser River Convention governs sockeye and pink fisheries only in a specified area. Thus, agreed harvest ceilings and allocations can be defeated by

permitting fisheries to be prosecuted outside the agreement area. Under the Pacific Salmon Treaty, the Parties must apply harvest ceilings and management measures to the entire Fraser River sockeye and pink fisheries (although Fraser River Panel management measures apply only in the agreement area).

Second, U.S. treaty Indian tribes are to participate directly in setting the policy and management objectives of the new Fraser River regime. Those tribes are to be represented not only by a voting member of the U.S. section of the Commission, but also by a representative on the Fraser River Panel. Direct tribal participation in the Treaty will contribute to sound management, and will ensure that regulations are consistent with established United States treaty Indian rights and domestic allocation objectives.

In 1989, the Commission may begin to consider adjusting allocations to implement the equity principle of Article III (1)(b), if that proves necessary and appropriate. Annex IV, Chapter 4 prescribes two successive four-year regimes for the Fraser River. The first four-year regime, 1985-88, provides the United States the following sockeye catch levels (based on preliminary expectations of run size): 1985, 1.78 million; 1986, 3.00 million; 1987, 1.06 million; and 1988, 1.16 million. These levels may be adjusted to increase or decrease, based on agreed changes in estimated run sizes. In the second four-year regime, 1989-92, the United States is entitled to a total of 7 million

sockeye, or an annual average of 1.75 million sockeye. Throughout both regimes, the United States is entitled to 3.6 million pink salmon for each applicable year. The eight-year average harvests of sockeye and pink salmon provided to the United States under the Treaty exceed catch levels for any eight-year period throughout the history of the Fraser River Convention.

When the regimes are concluded, allocations will be determined by the Commission and the Parties.

#### TRANSBOUNDARY RIVER REGIME

Article VII establishes two special provisions for relevant salmon stocks spawning in the Canadian portions of certain transboundary rivers, the Taku, Stikine, and Alsek. First, spawning escapements for these stocks are to be established initially by the appropriate Panel, which is to forward them through the Commission to the Parties. Second, enhancement is intended to be cooperative ~~or, if unilateral, then with the approval of the Commission.~~ In recognition of its unique status, the Columbia River is given special treatment in Annex IV, Chapter 1. The Yukon River is wholly exempt from this regime by Article VIII and the Memorandum of Understanding to the Treaty.

Specific management regimes for these rivers are established in Annex IV, Chapter 1. That Chapter closely limits Canadian harvest of the salmon on these rivers for 1985 and

1986. On the Stikine River, Canada is limited to annual harvest of 35% of the total allowable catch (TAC) of Canadian Stikine River sockeye or 10,000 such sockeye, whichever is greater, and 2,000 coho. In future years, the U.S. would have this limit apply to 35% of the TAC for Canadian Stikine River sockeye for areas 106 and 108, and the Canadian portion of the river. On the Taku River, Canada is permitted 15% of the TAC of Canadian sockeye.

These limitations were established to protect the United States fishermen who for over a hundred years have fished the salmon on these rivers. Canadian fishermen, on the other hand, are relative newcomers to these fisheries. The limitations also reflect the reality that, only through new enhancement, can the Parties provide for long-term, viable fisheries in Canada.

It is particularly important to note that a provision of the Memorandum of Understanding establishes that, within one year of entry into force of the Treaty, the Parties will determine what portion of Canadian-spawned salmon will be deemed to be of U.S. origin. This approach recognizes that salmon in transboundary rivers are not subject to the same accounting mechanism as are salmon in other rivers. The reason is that there are, in effect, two states of origin for salmon in transboundary rivers. Both nations must bear the burdens of river management to protect the stocks, so both nations should share the equity benefits.

THE NORTHERN BOUNDARY AREA

Annex IV, Chapter 2 establishes a regime for fisheries in the boundary area between northern British Columbia and south-eastern Alaska, near the United States-Canadian maritime boundary in Dixon Entrance. The Parties are committed to management measures designed to manage interceptions in these mixed origin and extremely volatile fisheries, without significantly affecting each country's ability to harvest its own stocks. In such fisheries, any limitation on interceptions may limit the ability of either U.S. or Canadian fishermen to harvest their own country's salmon. For its part, the United States is committed to ensuring that our fishermen continue to fully harvest available U.S. stocks in this area.

SOUTHERN COHO

The United States and Canada recognize that improved management and conservation measures must be developed for coho salmon harvested by fisheries in Washington and southern British Columbia. In Annex IV, Chapters 4 and 5, the Parties agree to limit annual Canadian harvests off the west coast of Vancouver Island to 1.75 million coho for 1985 and 1986. There is a compensatory adjustment in the U.S. catches of Fraser River sockeye.

*coho  
adjust*

In addition, in Chapter 5, the Parties agree to reciprocal extensions for 1985 of recent management actions. A Joint Coho Technical Committee is to be established to develop information

on stock status and productivity, in order to guide development of future management regimes.

#### CHUM SALMON

Annex IV, Chapter 6 on chum is intended to institutionalize the Parties' commitment to intensify chum research and develop joint management plans. A Joint Chum Technical Committee is to be established to develop specific management measures for the 1985 season and thereafter.

#### THE YUKON RIVER

As noted earlier, Article VIII recognizes that the Yukon is unique among the transboundary rivers. The distant stocks on this geographically remote river are subject, in part, to another treaty regime between the Parties and Japan. Accordingly, the Parties provide that the equity provisions of Article III (1)(b), and the special provisions for transboundary rivers are not applicable to the Yukon. Additionally, recognizing that the Yukon River interests are not provided any representation on the Commission and the Panels, the Treaty provides for a separate organizational structure to deal with Yukon River issues. Consequently, these issues will not be subject to the Commission's jurisdiction.

The Parties agree, inter alia, to account for United States harvests of salmon originating in the Canadian section of the river. The Parties are not precluded from adopting the approach

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identified in the Memorandum of Understanding, which is to consider the percentage of the TAC of Canadian-bound salmon deemed to be of United States origin. In making these determinations, the United States anticipates full participation by Yukon user groups and political constituencies, who did not take part directly in the Pacific Salmon Treaty negotiations.

INDIAN RIGHTS

Article XI affirms, inter alia, that the Treaty is not intended and should not be interpreted to modify Indian treaty rights. This Treaty is intended to create a forum that will

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enable treaty Indian tribes to secure effective implementation of their preexisting treaty rights and obligations.

CONCLUSION

Nothing so ambitious as this treaty has ever been undertaken in U.S. international fishery relations. To ensure early entry into force and operation of the Treaty, an enormous effort by the Administration, Congress, the States, and the tribes will be required in the next several weeks. Constitutional processes will have to be completed. Commissioners and representatives for three Panels will have to be selected and appointed. Technical Committees will have to develop information and recommendations. The Treaty organs will have to be organized and funded; for this purpose a supplemental appropriation for the State Department will be required.

The Treaty also envisages enhancement programs to ensure that conservation and allocation schemes can accommodate all interests. With these tasks accomplished, with a continuing commitment of the Federal Government, the States, the treaty Indian tribes, and the fishermen to the success of this enterprise, and with the cooperation of Canada, effective conservation and fair allocation of the valuable Pacific salmon stocks will be assured.

Thank you.

STATEMENT BY  
HONORABLE THEODORE G. KRONMILLER  
BEFORE THE  
SUBCOMMITTEE ON FISHERIES AND WILDLIFE  
CONSERVATION AND THE ENVIRONMENT  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
February 25, 1985

Mr. Chairman:

I appreciate the opportunity to appear before the Subcommittee to testify on H.R. 1093, a bill to implement the U.S.-Canada Pacific Salmon Treaty. For the past two years, it was my honor, to serve as the United States negotiator for the treaty.

Last week, I appeared before the Senate Foreign Relations Committee to urge advice and consent of the Senate to ratification of the Treaty. I was pleased to do so with the strong and widespread support of the affected States, treaty Indian tribes, and commercial and sports fishermen.

A detailed description of the Treaty is found in my testimony before the Senate Foreign Relations Committee. I would like to request that those remarks be included in this hearing record.

Mr. Chairman, the Administration strongly supports H.R. 1093 and believes that no changes are necessary for the United States to implement the Treaty. It is a matter of record that non-federal members of the U.S. Delegation to the treaty negotiations seek only minor, fiscal amendments.

The negotiations began fifteen years ago. As the talks proceeded, the United States confronted an internal negotiation

among the treaty Indian tribes, the State of Alaska, and the States of Washington and Oregon, among organizations of commercial and recreational fishermen, and among various commercial fishing gear groups. Each was represented on the United States Delegation, which grew over the years to number more than one hundred persons. Often the disagreements made it difficult to put forward national positions. In the end, it was only because each member of our Delegation was willing to respect and accommodate the basic interests of the others, that we were able to reach consensus agreement on the treaty. For his special contributions to the development of that consensus, we owe Counselor Derwinski, the political overseer of our delegation, a particular debt of gratitude.

The support of the United States Delegation for the Treaty and for its early implementation warrants prompt action by the Administration and the Congress on this essential legislation. Early enactment of this legislation will make it possible to implement the Treaty before the major 1985 Pacific salmon fishing seasons. The response of the Executive Branch and both Houses of Congress, with the support of the interested State and tribal managers, and the many user groups, reflects the importance that is attached to achieving an immediate and effective answer to the severe conservation problems of Pacific salmon.

The Treaty provides for a new intergovernmental institution, the U.S.-Canada Pacific Salmon Commission, with three associated Panels, Northern, Southern, and Fraser River.

The Commission and Panels will have the responsibility to develop regimes for fisheries in which the fishermen of one country intercept Pacific salmon spawned in the rivers of the other, and to establish Fraser River fisheries regulations corresponding generally to those now developed by the International Pacific Salmon Fisheries Commission.

H.R. 1093 identifies the roles of the Federal Government, the States of Washington, Oregon, and Alaska, the treaty Indian tribes, and the commercial and recreational fishing sectors. The bill also identifies how decisions will be taken by the United States section of the Commission and Panels.

As you might expect, these matters are of great importance to those concerned in the Pacific Northwest and Alaska. Most of the domestic salmon fisheries regulation that will be required by the Treaty will relate to fisheries now under State or tribal management. It is natural that those authorities insist that their management responsibilities not be supplanted by decisions of the Federal Government. On the other hand, it is reasonable that the Federal Government make certain that the United States can meet its obligations under the Treaty. The bill which has been introduced strikes an ideal balance of these legitimate interests.

H.R. 1093 leaves it entirely to the States and the treaty Indian tribes to regulate the fisheries subject to their jurisdiction in a manner consistent with our bilateral Treaty obligations. At the same time, the bill provides the Federal

Government the right to preempt State or tribal regulations which would violate those obligations. Because preemption is an extraordinary power intended for only the most critical situations, the role reserved by H.R. 1093 to State and tribal managers is fundamental to the successful implementation of the Treaty. The proposed legislation provides for full participation by the States and treaty Indian tribes in the development of international obligations under the Pacific Salmon Treaty. Indeed, as I shall describe, States and Indian treaty tribes are assured greater power in the U.S. section, than is provided the Federal Government.

H.R. 1093 provides that the U.S. section of the Commission will be composed of four persons appointed by the President. There will be a federal official, a person appointed from a list submitted by the Governors of Washington and Oregon, a person appointed from a list submitted by the Governor of Alaska, and a person appointed from a list provided by the treaty Indian tribes of Idaho, Oregon, or Washington.

Decisions of the U.S. section will be taken by consensus. The federal commissioner will not have a vote, but will be expected to play an important advisory and conciliatory role.

H.R. 1093 ensures that the composition and voting arrangements for the Panels will also be fair and reasonable. The bill provides an appropriate balance among the federal agencies, the State and tribal management entities, and the fishermen.

As you know, following the "Boldt Decision", some difficulty was encountered in providing for U.S. treaty Indian participation in the regulatory process of the International Pacific Salmon Fisheries Commission. At long last, this matter will be put behind us. The Pacific Salmon Treaty clearly provides for such participation, and this bill ensures the treaty Indian tribes will have a voice, not only in the U.S. section of the Commission, but also on the Fraser River and Southern Panel.

The U.S. section of the Fraser River Panel will be made up of a federal official, an official from Washington State, a person nominated by the treaty Indian tribes that fish the Fraser River salmon, and a commercial fisherman. These four must concur on the pre-season management positions to be taken by the United States, thus ensuring industry, the tribes, and the State of Washington important roles in the establishment of the basic regime for each season. However, H.R. 1093 reflects the reality that, for in-season adjustments, the principal decision making power should rest with Washington State and the treaty Indian tribes. For such adjustments, a majority vote, with a concurrence of the state and tribal Panel members, is required. This permits the two principal management units to act expeditiously during the fishing season.

The United States will be represented on the Southern Panel by six members, one federal, one from the State of Oregon, one from the State of Washington, two from the treaty Indian tribes, and one from the commercial or recreational sector (alternating

each year). At least one member will have to be a voting member of the Pacific Fishery Management Council. Decisions and recommendations of the Southern Panel will require a concurring vote of the Oregon and Washington representatives and one tribal representative. In addition, the Southern Panel will require concurring votes of the majority of all panel members present.

The Northern Panel will be comprised of six members on the U.S. side, one federal, one from the Government of the State of Alaska, and four others who are knowledgeable and experienced in salmon fisheries in the Northern Panel jurisdiction. At least one member will have to be a voting member of the North Pacific Fishery Management Council. All decisions and recommendations of the Northern Panel will require concurring votes of the majority of panel members present.

Mr. Chairman, it was understood by all members of the U.S. Delegation that, to resolve the critical issues relating to the management of Pacific salmon, it would be necessary, but not sufficient, to negotiate an acceptable treaty with Canada. It was agreed that two domestic matters also had to be satisfactorily resolved. One of those matters was the adoption of implementing legislation which would resolve the domestic political, economic, and legal issues. That legislation is before this Subcommittee. In my estimation, any amendment to the provisions of H.R. 1093 that would relate to the essential balances of which I have spoken would be opposed by one or another of the constituent interests. Minor fiscal matters

aside, H.R. 1093 as drafted is strongly supported by all concerned domestic interests as a pragmatic accommodation.

The other matter was the resolution of the "All Citizens" lawsuit. I am pleased to report that a stipulation settling critical issues of that lawsuit has been filed by representatives of Alaska, Washington, Oregon, the treaty Indian tribes, and the Federal Government.

Mr. Chairman, it has been a rewarding challenge to serve as the United States negotiator. It was a privilege to work with a delegation of Americans who successfully overcame, by enormous effort, great patience, and good will, the deep and painful conflicts of many years.

The Treaty, is not without its disappointments to various affected interests on both sides of the border. But the Treaty has the support of the United States Delegation and the Administration, and of the Canadian Government, because bilateral cooperation is essential to the effective conservation and management of the Pacific salmon stocks intercepted by the fishermen of each country. With the enactment of this enabling legislation, a goal sought over fifteen years by the thousands of fishermen, by their communities, by their representatives in Congress, by the federal agencies, and by the affected States and tribes, will at last be realized.

I urge you to act favorably on H.R. 1093 as quickly as possible.

Thank you.

99TH CONGRESS  
1st Session

SENATE

TREATY DOC.  
99-2TREATY WITH CANADA CONCERNING  
PACIFIC SALMON

## M E S S A G E

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA CONCERNING PACIFIC SALMON, INCLUDING ANNEXES AND A MEMORANDUM OF UNDERSTANDING TO THE TREATY, SIGNED ON JANUARY 28, 1985


 A large, handwritten signature in black ink. The signature is fluid and cursive, appearing to read "Ted K. Kennedy". In the center of the signature, there is a small, detailed drawing of an eagle with its wings spread, perched on a shield. The shield has horizontal stripes, suggesting the American flag.

FEBRUARY 19, 1985.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1985

*Article III*, discussed above, establishes the principles that govern operation of the Commission and this treaty. The underlying principles are two-fold: to conduct fisheries and enhancement programs to provide for conservation and optimum production and two, to "provide for each Party to receive benefits equivalent to the production of salmon originating in its waters"—the equity principle. The Parties harbor no illusions that the equity principle will be simple to quantify. In adopting this provision, the Parties, by Memorandum of Understanding to the treaty, have recognized expressly that levels of interceptions will vary annually and over time, that data on the extent of interceptions in some areas are imprecise, and that it would not be immediately possible to determine with certainty the total production of salmon from each country's rivers. They also recognized that methods of evaluating benefits accruing within each country differ. For these reasons, the Parties anticipated that it would be some time before the Commission could discern that a trend has developed and ascertain the value of benefits due each Party under Article III (1)(b).

The Commission will have the equally complex task of developing programs to adjust any inequity and provide for any appropriate adjustment to implement the provisions of Article III (1)(b). The treaty establishes three precepts that are to guide the Parties in their implementation of these twin principles of conservation and equity. Initially, Article III (3)(a) requires the Commission, when considering equity adjustments, to recognize the desirability of reducing interceptions. This precept recognizes that excessively high interception rates may result in conservation problems and reduce incentives to enhance resource production. However, such reductions cannot be mandated in all cases because they will not always be fair or feasible. In the northern boundary area, for example, since stocks are of both Canadian and United States origin and cannot be segregated, the United States fishery targeted on United States-origin salmon must catch Canadian-origin sockeye in an incidental manner. Similarly, the Canadian fishery for Canadian-origin sockeye and pink salmon intercepts substantial numbers of United States pink salmon. A reduction in interception levels would preclude a Party from targeting on its own stocks. This would be plainly contrary to the Parties' objective.

Therefore, to balance the concern with reducing interceptions, Article III (3)(b) further instructs the Commission to consider a second important concept: the desirability of avoiding undue disruption of existing fisheries. This protects several United States fisheries from undue social or economic dislocation as a result of equity adjustments. In the northern boundary area, the example cited above, historic United States fisheries targeting on United States stocks could not be shut down in order to reduce interceptions. In the case of the Fraser River, a fishery developed and managed jointly by the Parties since the 1930's, Canada affirmed that it has no intention of closing down a historic United States fishery. Article III (3)(b) provides these fisheries an assurance that the Commission will seek to avoid the social and economic dislocations of major adjustments.

Finally, Article III (3)(c) exhorts the Commission when performing equity calculations, to note that seasonal variations in stocks

are anticipated, and therefore it is necessary to view equity over the long term based upon demonstrable trends rather than short-term fluctuations.

The United States section of the Commission has the responsibility for developing proposals to correct equity imbalance in favor of the United States. In developing such proposals, imbalances should be addressed where possible through enhancement programs rather than through adjusting established fisheries.

~~Article IV~~ concerns the conduct of the fisheries and sets out the procedures to be followed to establish annual fishery regimes. Each Party is to submit to the other Party and to the Commission a report that will include basic statistics on each fishery: run size, spawning escapement (except for transboundary rivers, where under Article VII the appropriate Panel is to perform this task), estimated total allowable catch (TAC), stock interrelationships, management and, as appropriate, domestic allocation objectives. The Commission is to solicit Panel views on the report and recommend fishery regimes to the Parties. On adoption by the Parties, these regimes are to be promulgated as chapters to Annex IV of the treaty and implemented by domestic federal, state, and tribal management authorities. Each Party is to notify the other Party and the Commission of regulations and in-season modifications.

Under Article IV, each Party is to establish and enforce the regulations to implement the regime, except in the case of the Fraser River regime for which Article VI establishes different procedures.

~~Article V~~ elaborates on the Article III (2) commitment to bilateral cooperation on salmon enhancement programs. Parties are to exchange information on their own anticipated projects. Cross-references to Article III reflect mutual concern that fish from one Party's enhancement project would not "flood" the other Party's fishery and unduly disrupt or displace an existing fishery. This would arise when a Party, in order to harvest its own stocks, will necessarily have to harvest the other Party's enhanced stocks. The consultation provision of Article V and the forum provided by the Commission should help the Parties avoid that result.

~~Article VI~~ establishes the special provisions for the portion of the Fraser River sockeye and pink fishery that occurs within the agreement area defined in Annex II to correspond to the Convention Area of the 1930 Fraser River Convention. Unlike other Panels, the Fraser River Panel is to propose pre-season regulations applicable within the agreement area to the Commission, which would then forward its proposals to the Parties. The proposed regulations become effective upon approval by the Party in whose waters the regulations would apply. The Panel may also order in-season management responses, which each Party is to implement unless the regulation is inconsistent with its domestic law. Article IV (4) specifically requires that Panel actions be consistent with established United States Indian treaty rights and domestic allocation objectives.

~~It is the treaty's intent to develop a Fraser River regime that encompasses all Fraser River pink and sockeye salmon, wherever harvested, though the special procedures apply only within the Fraser River Panel area. Thus, Annex IV, Chapter 4 prescribes a regime based on the TAC of Fraser River sockeye and pink salmon.~~

## **The U.S. Interest In Fraser River Salmon**

The U.S. and Canada have a long history of equal investment and shared harvest on Fraser River salmon. For most of this century, U.S. taxpayers and U.S. fishermen invested in and sacrificed for the future of the Fraser runs. We paid to correct environmental disasters. We funded enhancement work and pioneered technologies for fish passage which made the present harvest miracles possible. This was how the prior Treaty (Fraser Convention of 1930) and the 1985 Treaty were supposed to have worked. However, many in the Northwest did not fully appreciate the incredible potential for growth in the Fraser runs when negotiating the new Treaty. And Canada is now reaping for itself the entire benefit from this shared accomplishment.

### **Percentage of Sockeye Catch**

<u>Years</u>	<u>Percentage of Sockeye Catch</u>
1945 - 84	42%
1985 - 88	27%
1989 - 93	16%
1994 - 98	11% <small>(Current Canadian negotiating position)</small>

**The U.S. Fraser River fishery is critical to the survival of Pacific Northwest commercial fisheries.**

**Now is the time to correct inequities imposed upon the Pacific Northwest under the current Treaty Annexes.**

**FRASER RIVER SOCKEYE HARVESTS 1973 - 93**  
**TOTAL U.S. VS. TOTAL CANADIAN CATCH**

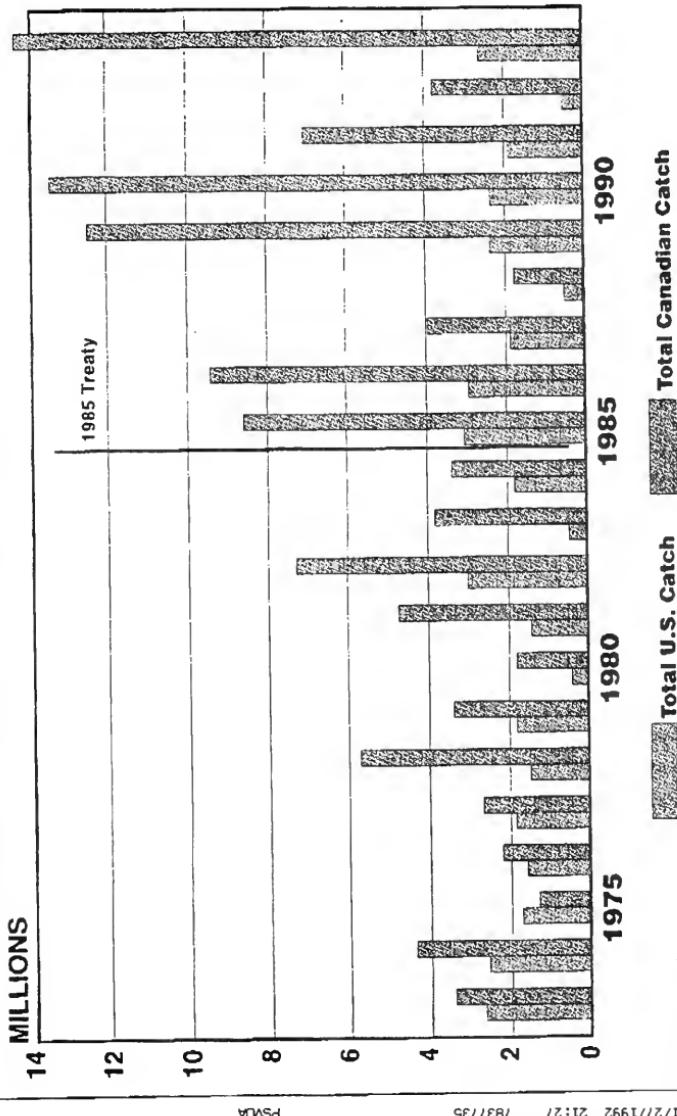


Table 1. Pacific Salmon Commission's (PSC) estimates of the harvest of Fraser River sockeye salmon in the District 4 purse seine fishery, 1980 to 1993.

64;fras8093.w51;7/5/94

Year	Total Dist. 4 Seine Harvest (All Species)	PSC Estimate of Fraser Sockeye	Percent Fraser to Total Harvest
1980	3,063,392	Nil	Nil
1981	4,254,524	Nil	Nil
1982	5,400,004	Nil	Nil
1983	17,806,378	95,811	0.54
1984	6,781,808	Nil	Nil
1985	9,288,132	10,263	0.11
1986	20,011,690	18,007	0.09
1987	1,968,711	Nil	Nil
1988	4,511,951	Nil	Nil
1989	13,905,550	191,027	1.37
1990	15,816,337	270,437	1.71
1991	29,992,911	63,889	0.21
1992	10,873,367	91,242	0.84
1993	13,321,850	191,000	1.43

Year	Total Fraser Sockeye Run	Percent Harvested in Dist. 4
1980	3,133,000	Nil
1981	7,743,000	Nil
1982	13,989,000	Nil
1983	5,242,000	1.83
1984	5,918,000	Nil
1985	13,881,000	0.07
1986	15,904,000	0.11
1987	7,694,000	Nil
1988	3,762,000	Nil
1989	18,336,000	1.04
1990	22,006,000	1.23
1991	12,321,000	0.52
1992	6,426,000	1.42
1993	24,336,000	0.78

Total Return of Nass/Skeena Sockeye  
1975–1993

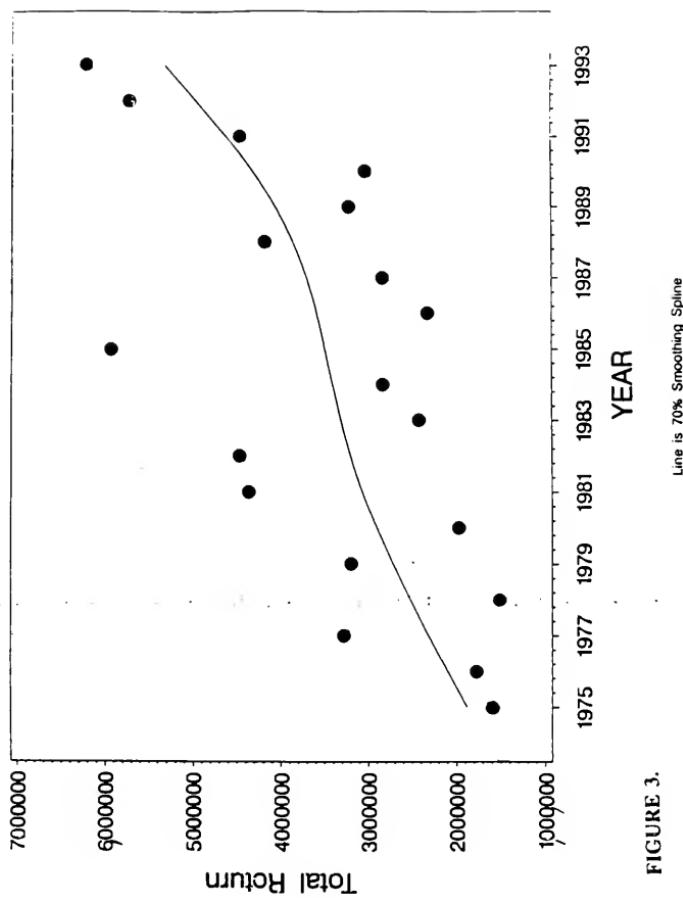


FIGURE 3.

Enhanced Skeena/Babine Sockeye Return  
1969–1993

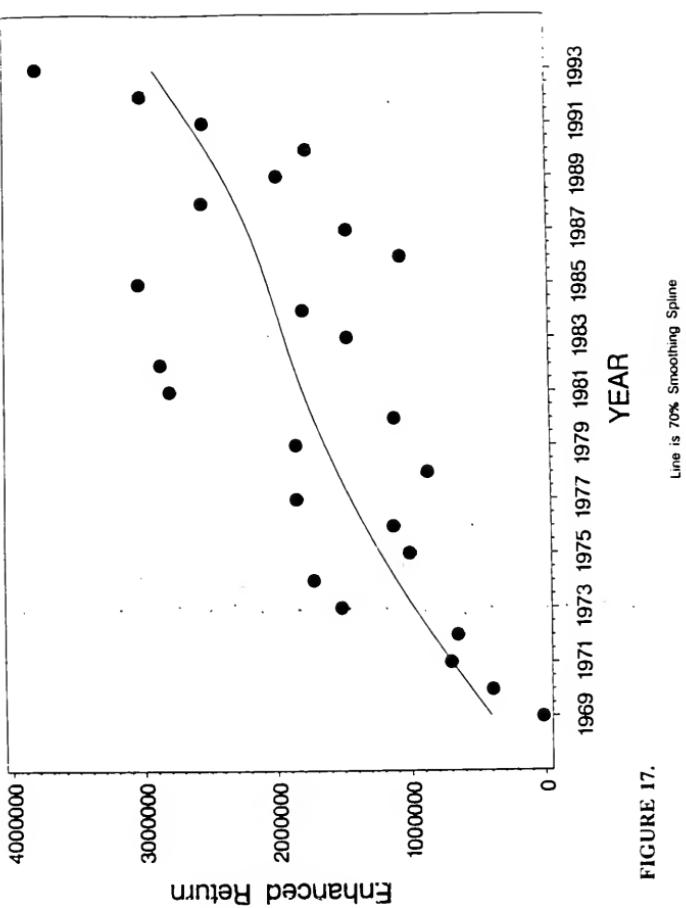


FIGURE 17.

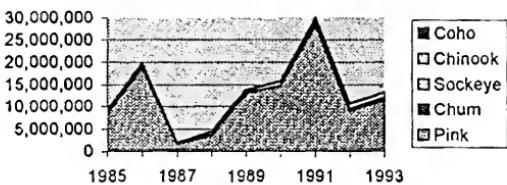
Line is 70% Smoothing Spline

District 104 Purse Seine Fishery					
	Pink	Chum	Sockeye	Chinook	Coho
1985	8,498,650	217,161	431,330	11,808	129,183
1986	18,846,662	437,581	444,731	9,429	273,287
1987	1,674,018	71,147	170,991	3,557	48,992
1988	3,543,934	272,572	591,069	9,897	94,263
1989	13,010,578	210,639	516,069	9,574	158,720
1990	14,600,461	213,121	796,782	7,731	198,242
1991	28,378,281	554,037	849,831	7,926	201,836
1992	8,876,984	676,270	1,072,039	16,007	222,212
1993	11,620,309	581,161	945,285	4,617	170,478

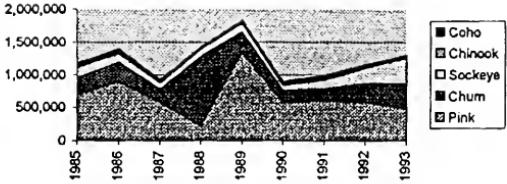
  

Tree Point 101-11 Gillnet Fishery					
	Pink	Chum	Sockeye	Chinook	Coho
1985	691,455	256,314	172,863	2,787	53,010
1986	900,000	286,616	145,657	1,267	63,073
1987	583,295	188,917	107,595	2,077	38,123
1988	231,476	1,049,179	116,240	2,036	17,206
1989	1,347,847	299,798	144,936	1,808	32,485
1990	580,555	174,179	85,690	1,710	42,893
1991	600,529	183,822	131,492	2,077	70,319
1992	581,208	282,075	244,649	1,059	40,001
1993	480,963	383,285	393,996	1,249	32,488

### Alaska District 104 Purse Seine Fishery



### Tree Point Gillnet Fishery



## Alaska Dist. 104 Purse Seine

### Average Weekly CPUE, 1970-1984

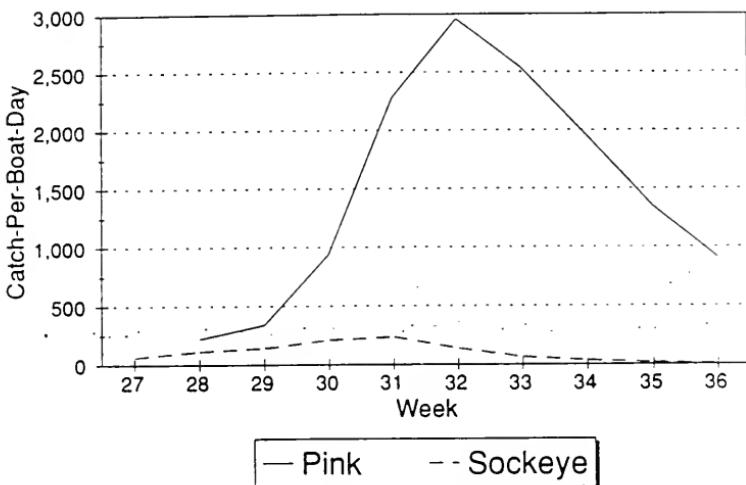


FIGURE 1.



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**THE PACIFIC SALMON TREATY: OPPORTUNITIES FOR  
 IMPROVEMENT AND FOR RESOLVING THE CURRENT CONFLICT**

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**Background**

The Pacific Salmon Treaty (PST) has failed to prevent conflict over salmon harvests this year. Negotiators failed to reach long term agreements in the 1993 round of negotiations.

Canada argues that the U.S. is harvesting more and more of the salmon which are bound for Canadian rivers, lakes and streams. At the same time, the U.S. is seeking to increase its harvest of Canadian Fraser River sockeye as run size increases.

The U.S. is also concerned that Canadian harvests of chinook and coho are resulting in excessive mortality of endangered and sensitive salmon populations that originate in U.S. watersheds. U.S. fisheries for these species have been severely restricted in recent years, and Canadian harvest impacts appear to be significant.

Canada feels that it is entitled to the full benefits of the currently enormous runs of Fraser River salmon, because these runs were rebuilt by restricting Canadian harvests and forgoing hydroelectric development, while the U.S. has allowed salmon habitat to degrade. The U.S. argues that it has responded to Canadian concerns by preventing Washington fishermen from intercepting early Stuart sockeye (the earliest returning Fraser River stock) and by taking other measures.

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While U.S. efforts to protect depressed Canadian salmon stocks have been significant, the U.S. has indeed failed to prevent the loss and degradation of an enormous amount of salmon habitat in Northern California, Oregon, Washington, and Idaho. Hydropower development, water diversions for agriculture and urban development, pollution, poor forestry practices, overfishing, harmful hatchery practices, and other anthropogenic factors have contributed to the precipitous decline of U.S. salmon runs. A long period of relatively low ocean productivity off the coasts of California, Oregon, and Washington has exacerbated this decline, particularly in the last 3 years. As a result, many U.S. salmon stocks originating from the Pacific Northwest, including several that mix with Canadian stocks, are depressed and cannot withstand high harvest rates. On the other hand, many Alaskan salmon populations are at record high abundance levels, probably reflecting better freshwater habitat and higher ocean productivity. In harvesting abundant pink salmon, fishermen in Southeast Alaska also harvest sockeye that originate in Canadian watersheds, another source of conflict between the U.S. and Canada.

In an effort to address its grievances, Canada has implemented a licensing program for all U.S. commercial fishing vessels which transit through selected Canadian waterways. This program, which went into effect on June 15th, 1994, requires the purchase of a CAN\$1500 license for each passage. This action is intended to prevent U.S. fishermen from traversing Canadian waters to catch Canadian-origin fish (DFO, 1994c). In addition, the Canadian management plan for the Fraser Panel Area may result in aggressive fisheries prosecuted by Canadian fishermen. This would leave less Fraser River fish for Washington state fishermen. In the early 1980's, the Canadians expanded fisheries which intercepted Washington and Oregon chinook and coho stocks in an attempt to highlight the costs of unilateral management and the benefits of a salmon treaty.

These events have elevated a difficult treaty negotiation into an international conflict. The roots of the conflict are examined in this paper, and recommendations for addressing it, and for improving the treaty to prevent conflicts in the future, are presented.

#### **Principles of the Pacific Salmon Treaty**

The principles of conservation and equity are fundamental to the Pacific Salmon Treaty (PST). The conservation principle calls for each party to prevent overfishing and provide for optimum production. The equity principle calls for the allocation of harvest privileges according to each country's contribution to salmon abundance. Harvest privileges have been allocated as fixed harvest ceilings for many of the fisheries covered by the PST. These fixed harvest ceilings are important obstacles to

the fulfillment of the conservation principle of the Treaty. With fixed harvest ceilings, the numbers of fish which are harvested do not vary from year to year, even when fish abundance declines and lower harvests are warranted. In addition, fixed harvest ceilings do not allow for increased harvest opportunities when run sizes increase; consequently, they reduce incentives for stock rebuilding efforts.

**\* There is an obvious need to replace fixed harvest ceilings with abundance-based Total Allowable Catch (TAC) levels that would be responsive to annual variations in run sizes as well as to longer-term changes in freshwater and marine survival rates.**

**\* TACs should be based on the harvestable surplus remaining after a sufficient number of fish is allowed to escape the fishery to sustain salmon populations, rebuild weak stocks, maintain genetic diversity, and allow salmon to fulfill their ecological roles (i.e., a spawner escapement goal). TACs for strong stocks may be based on maximum sustainable yield (MSY); however, TACs for weak stocks should be based on a rebuilding schedule which, for example, might have as a goal the maximization of recruit numbers rather than MSY. The TAC is the difference between the actual projected (prior to the start of the season) abundance and the escapement goal.**

Methods for projecting the abundance of specific salmon populations and for setting conservation-based spawner escapement goals will be necessary to develop abundance-based TACs for the populations covered by the PST. The U.S. Pacific Fishery Management Council has developed such techniques, but several aspects must be improved: 1) escapement goals should maximize recruitment for depleted salmon populations, rather than maximize sustainable yield; 2) escapement goals should be increased by a 10% "safety factor" to account for scientific uncertainty, natural (unpredictable) variability, and unknown effects of harvest on the genetics of salmon and on the ecosystems which salmon are a part of; 3) more accurate assessments of spawner abundance are needed to prevent overfishing; and 4) better models for projecting abundance are needed, particularly when salmon populations are at low levels (for further information, see Chan and Fujita, 1994a).

**\* Percentage allocations under such TACs, allocated according to a negotiated initial allocation formula, would reduce the need for annual negotiations to establish allocations. Trading, sales, or leases of quota shares could reduce conflict by allowing the parties to obtain the harvest rights they need to prosecute their fisheries when the distribution of salmon changes.**

Leases and purchases of fishing privileges are not unprecedented -- such transfers have been consummated for Southern bluefin tuna and Atlantic salmon (see Muse and Schelle, 1989 and NMFS, 1993a for a further discussion of these transfers) to improve conservation and rebuild stocks. Improved understanding of the ocean distribution of salmon will be necessary to reduce incidental take and allow a transferable quota share system to work.

The equity principle establishes that the benefits accrued to each party are equivalent to the production of salmon originating in its waters. Reducing interceptions in relevant fisheries is an obvious concern. Interception fisheries, such as the West Coast of Vancouver Island Troll and the Washington State Fraser Sockeye and Pink salmon fisheries, continue based on agreed upon trade-offs in U.S. and Canadian-origin fish. Achieving an equitable allocation of harvest benefits has also proven to be difficult. One reason is that determining the precise numbers of salmon intercepted by each country is a challenging task. Moreover, in order to assess the economic benefits which are foregone by (and owed to) each country from intercepted fishes, a new economic valuation method is needed, but has yet to be completed and approved by the two parties. When the distribution or abundance of specific salmon populations changes, interceptions by one or another party may increase, potentially creating conflict. For example, the harvest of unusually abundant pink salmon runs in Southeast Alaska by U.S. fishermen has resulted in increased interception of sockeye salmon originating in Canada's Fraser River.

**\* The allocation of transferable percentage shares of TACs could help increase flexibility needed to adapt to changes in the distribution and abundance of salmon populations.**

The PST includes four Annexes which are subject to periodic review and renegotiation (hence the annual negotiation process). Of the four Annexes, Annex IV is the most relevant to the current discussion; the six chapters of Annex IV deal directly with harvest allocation between various U.S. and Canadian fisheries. Although the chapters of Annex IV are intended to expire and be re-negotiated on a rotating basis, the lack of long-term agreements from the 1993 round of negotiations has left a number of important issues for the current round of negotiations. Annex IV is composed of the following Chapters:

Chapter 1. Transboundary rivers stocks (i.e. Alsek, Taku, Stikine Rivers)

Chapter 2. Northern B.C. and Southeast Alaska fisheries at Noyes Island and other northern B.C. fisheries

Chapter 3. Chinook harvest ceilings for West Coast of Vancouver Island, Strait of Georgia, Northern B.C. and Southeast Alaska fisheries

Chapter 4. Fraser River sockeye and pink salmon allocations

Chapter 5. Coho salmon in Southern Panel fisheries

Chapter 6. Chum salmon in Southern Panel fisheries.

#### **Fraser River Sockeye**

The Fraser River system supports an impressive run of sockeye salmon. In 1993, the run totaled over 24 million fish (although historic runs of 40 million fish have been recorded). Sockeye populations in the Fraser River operate on a four year cycle (i.e. run size is strongly influenced by escapement four years previous to the present), with dominant cycle runs in 1993 and 1994. The Fraser Sockeye run is subdivided into a number of major and minor stock groups.

For the 1989-1992 period, U.S. allocation of Fraser River sockeye was established at 7,000,000. In 1993, U.S. allocation numbered 2,765,000 sockeye, of which 2,692,000 was harvested (preliminary data). In addition to agreeing to this harvest limit, the U.S. agreed to curtail its fishery in order to reduce impacts on the depressed early Stuart stock, which is the earliest returning segment of the Fraser run.

Since a previous round of negotiations covering the 1989-1992 period had capped U.S. catch of Fraser River sockeye at 7,000,000, the U.S. was not able to benefit from the unexpectedly strong returns of recent years. The U.S. has pressed for allocations which would allow U.S. fishermen to benefit from the strength of the rebuilt Fraser run. The Canadians argue that rebuilding of the Fraser River run is the result of Canadian conservation efforts. Rebuilding has been made possible by the maintenance of adequate productive habitats and by fishery regulations which provided for adequate escapement on a system-wide and stock-specific basis. Beginning in 1985, Canada began to increase annual escapement goals (i.e., more fish were allowed to escape the fishery to spawn), in spite of increases in sockeye abundance (FRP, 1994).

Accordingly, the Canadians hold that benefits should accrue mainly to Canadian fishermen. The U.S. counters that rebuilding efforts have not been solely unilateral; the U.S. had in the past restricted Washington fisheries in order to reduce impacts on the early Stuart River sockeye run. In addition, Washington fishing interests have argued that under the PST, Canada has an independent conservation obligation to protect and conserve salmon stocks (Doherty, 1994).

**Southeast Alaska Fisheries**

Canada has emphasized that overall, Canadian interception of U.S. salmon has decreased, while U.S. interception of Canadian salmon has reached record high levels. The issue of U.S. interception of Canadian salmon is most evident in Southeast Alaska (SEAK). In SEAK (the District 104 seine fishery in particular), sockeye salmon from the Canadian Nass, Skeena and Fraser river systems are incidentally caught by U.S. fishermen. Total sockeye and pink salmon catches in the District 104 (Noyes Island, Alaska) seine fishery have increased considerably over the years.

Under the terms of the PST, the District 104 fishery is limited by a sockeye quota (four-year, 1990 -1993, total catch of 480,000 fish) prior to Statistical Week 31. Sockeye salmon from the Nass and Skeena Rivers are most prevalent in the District 104 fishery prior to Statistical Week 31. During the first three years of the Annex, the District 104 fishery had harvested 348,169 sockeye prior to Statistical Week 31 (NBTC, 1993). This left a balance of 132,000 sockeye for harvest in the 1993 season prior to Statistical Week 31. The fishery opened on July (Statistical Week 28), and by July 22 (Statistical Week 30) approximately 41,000 sockeye were still available to the District 104 seine fishery (NBTC, 1993). A ten hour opening on July 22 resulted in a harvest of 72,255 sockeye, or 31,358 (6.5%) sockeye over the 480,000 Annex limit (NBTC, 1993). During Statistical Week 30, the sockeye catch represented 16.7% of the total catch of salmon in the District 104 seine fishery.

After Statistical Week 30, the U.S. fishery is no longer constrained by sockeye bycatch (although Canadian-origin sockeye is still harvested), as the fishery proceeds to harvest the bulk of the available pink salmon run. In 1993, sockeye catch as a percent of all salmon catch in the District 104 seine fishery was 12.9% in Statistical Week 31, declining to 10.1% in Week 32, 3.6% in Week 33, and 4.5% in Week 34.

Conflicts over the interception of Canadian sockeye remain since the catch of Fraser River sockeye peaks in Statistical Weeks 33 and 34. The catch of Fraser River sockeye in this fishery had increased from 10,000 in 1985 to 191,000 in 1993. The 1993 catch of 191,000 represented 0.78% of the total Fraser run. The increased catch of Fraser River sockeye is due to a number of factors: increased catches of pink salmon have resulted in increased sockeye bycatch; more Fraser sockeye have been available to the District 104 fishery as a result of increased run size; and possibly, variations in oceanographic conditions have affected sockeye migration routes. Since Fraser sockeye comprise less than 2% of the total annual catch of salmon in the District 104 fishery, controls on their interception may require foregoing harvest opportunities on productive pink runs. The U.S. has not counted the SEAK catch of Fraser sockeye towards its Fraser Area treaty allocations. The U.S. holds that

increases in the Fraser sockeye run are resulting in increases in the incidental catch of these fish in SEAK. As a result, the U.S. position is that negotiated catch ceilings for Fraser sockeye should pertain only to Washington state fisheries.

In addition to the increases in Fraser production, sockeye production in the Nass and Skeena Rivers has also reached high levels (NBTC, 1993). In the Skeena, this has been due in part to successful Canadian enhancement efforts. Although the Skeena sockeye run is comprised of over 50 stocks, two enhanced stocks are responsible for the majority of the production (Sprout and Kadawaki, 1987). As Canadian sockeye production increases, incidental catches of these fish in SEAK fisheries have become more difficult to control. In order to reduce U.S. interceptions of Nass and Skeena River sockeye, Canada has proposed that an additional week (Statistical Week 31) be covered under annex arrangements. Canada has further proposed that a "clockwork" management approach be implemented which would restrict District 104 fisheries in response to the ratio of sockeye to total salmon catch.

**\* To reduce conflict over SEAK interceptions of Canadian-origin sockeye, EDF recommends the allocation of transferable percentage shares of an abundance-based total allowable sockeye catch. Transferable shares would allow SEAK fishery managers to acquire sufficient harvest privileges for sockeye from managers responsible for fisheries in the Fraser River Panel Area and northern British Columbia to fully prosecute the pink salmon fishery, while compensating Canada for SEAK bycatch of Canadian-origin sockeye.**

The interception of northern British Columbia coho in SEAK troll and net fisheries is another source of conflict between the U.S. and Canada. There are no negotiated limits on coho interception in the SEAK or northern British Columbia fisheries. Historically, the northern British Columbia commercial catch of coho has been greater than that of Alaskan commercial fisheries (CTC, 1991). This trend persisted until the late 1970's when Alaskan coho catch became dominant. This catch may be attributed to factors, such as: 1) possible higher survival rates in Alaskan coho versus northern B.C. coho; 2) shifts in the distribution of Alaskan effort which increased the number of stocks available for harvest; 3) returns to Alaskan hatcheries have been greater than to hatcheries in northern B.C.; and 4) the shortened chinook season (due to PST chinook catch ceilings) may have led SEAK troll fisheries to increase their targeting of coho (CTC, 1991).

Canada contends that Alaskan interception of Canadian-origin coho increased from 270,000 in 1988 to 1,200,000 in 1991 (the most recently available data) (DFO, 1994a). The Coho Technical Committee report supports the claim that, in general, Alaskan interceptions have increased, putting the 1991 interception level at 815,800 (CTC,

1994). Cumulatively, Alaskan interception of Canadian-origin coho stands at 2,170,700 for the 1987-1991 period, in contrast to Canadian interceptions of 325,900 (CTC, 1994). Increases in the magnitude of Alaskan interceptions could be due to a number of possible factors: 1) increased abundance of Canadian-origin coho; 2) increased abundance of U.S.-origin coho, which would stimulate higher harvest rates; 3) shifts in the ocean distribution of Canadian-origin coho which increase their availability to Alaskan fisheries; and 4) redistribution of Alaskan fishing effort. For years for which data are available, interceptions of Canadian-origin coho increased when overall catches of coho in SEAK troll and net fisheries increased. When Canadian catch levels are high, Canadian interceptions of U.S.-origin coho have also been high during this time period. For Alaskan fisheries, the contribution of Canadian-origin coho to the total catch has also increased. The contribution of U.S.-origin coho to northern B.C. fisheries has increased as well, but the trend is less consistent.

**\* EDF recommends that, because increased abundance of Canadian-origin coho is not the sole cause of increased interceptions of these fish by SEAK fisheries, a maximum allowable bycatch level should be established. Where possible, changes in fishing effort should be implemented to reduce the interception of Canadian-origin coho.**

**\*To reduce long term conflicts, coho bycatch allowances should be allocated as transferable percentage shares of this maximum allowable level to northern B.C. and SEAK fisheries.**

Transferable shares would provide fishery managers with the flexibility to procure bycatch allowances necessary to prosecute fisheries when coho ocean distribution or abundance changes. For example, the SEAK coho troll fishery would have to be severely restricted to reduce interceptions of Canadian-origin coho under the current system of fixed harvest ceilings. Under a transferable bycatch allowance system, the SEAK fishery could purchase or lease sufficient bycatch allowance share from the B.C. fishery to allow the prosecution of the SEAK coho troll fishery. Percentage shares could be purchased, leased, or traded to allow for the efficient prosecution of fisheries when the ocean distribution of coho changes.

Coho from systems such as the Skeena, Nass, (Canadian) Stikine, Taku, and Alsek (transboundary) Rivers represent important management concerns (CTC, 1991). These interior stocks appear to be less productive than coastal coho stocks (CTC, 1991). In net fisheries, interior coho stocks often inter-mix with more productive species (e.g. sockeye) which originate from the same river systems (CTC, 1991), resulting in excessive harvest pressure on the weaker stocks.

In the SEAK and northern B.C. fisheries, impacts on the early run Skeena River coho (Canadian-origin) have been of particular concern. For the past five years, Canadian conservation actions have not been effective in achieving increased escapement to the Upper Skeena River (DFO, 1994b). Escapement levels for this stock were at record lows in 1992 and 1993. Since approximately half of the ocean catch of early Skeena River stock is taken by Alaskan fisheries, Canada has voiced the need for Alaska to restrict their harvest (DFO, 1994a).

Increased production of Skeena sockeye through enhancement projects has also increased pressure to harvest that stock. However, harvest rates which reflect the productivity of the sockeye run would further impact the Skeena coho run, which is bycaught in the fishery. While enhancement activities directed at Skeena River sockeye stocks have resulted in record high returns, concerns for the depressed coho and steelhead populations (and to a lesser extent, weak sockeye stocks) in the Skeena have constrained the sockeye harvest (Dragseth, pers. comm.). As a result, Skeena sockeye escapement in 1993 was nearly 1 million fish in excess of the escapement goal. For 1994, Canada has implemented additional conservation measures for the Skeena coho. This includes troll fishery closures in selected areas, harvest rate management in terminal gillnet fisheries, and reduced recreational bag limits.

\* **In order to meet escapement goals for the weak coho stock, controls on Canadian coastal and terminal areas fisheries are also possible. In coastal areas, Skeena River coho are widely distributed and intermixed with sockeye salmon from the same river. Nevertheless, there is a slight separation in the peak run timing between the two runs; Skeena sockeye peak about two weeks before Skeena coho. Hence, more precise targeting on the stronger sockeye stock (resulting in less bycatch of the weak coho stock) may be possible.**

\* **EDF recommends the establishment of an abundance-based TAC for Skeena sockeye, allocated as percentage shares according to a negotiated initial allocation formula. As Skeena early run coho abundance continues to constrain harvest opportunities for Skeena sockeye in terminal fisheries, harvest quotas for sockeye could be traded, leased, or sold to other fisheries, where the bycatch of sensitive coho stocks is minimal (e.g. the Noyes Island seine fishery in Southeast Alaska).**

#### West Coast of Vancouver Island

As negotiated, the West Coast of Vancouver Island (WCVI) commercial troll harvest is limited to an annual ceiling of 1.8 million coho. The contribution of U.S.-origin coho to this fishery is significant. Over the years, the contribution of U.S.-origin coho to this fishery has been as high as 80% (CTC, 1994). In recent years, this figure has declined towards 50% as a result of declining abundance in Puget Sound and

Washington coastal stocks. In 1993, Washington state had called for a WCVI catch ceiling of 1.2 million coho based on abundance projections and escapement needs. The final agreed upon ceiling was 1.7 million coho.

The Canadians hold that their interception of U.S. fish in the WCVI fishery is a fundamental counterbalance to U.S. interception of Canadian-origin fish (Fraser River sockeye and pink salmon in particular). Canada has stated that reductions in WCVI harvests are possible, but not without compensation and parallel U.S. actions on stock rebuilding. For 1994, Canada had offered to reduce its WCVI catch limit to 1.4 million coho, if SEAK fisheries are also limited to 1.4 million coho (DFO, 1994a). In 1993, Canada agreed to reduce its WCVI fixed catch ceiling from 1.8 million to 1.7 million coho. Due to much lower than expected coho abundance, the actual Canadian catch was under 1 million fish. For 1994, U.S. coho stocks are at record low levels of abundance. As a result, the retention of coho in all ocean commercial and recreational fisheries along the U.S. coast has been banned. While the catch ceiling has been set at 1.8 million coho, it is highly unlikely that a catch of even 1 million coho can be realized. Moreover, fishing effort based on such an optimistic expectation would overharvest stocks which are already at record low levels.

The U.S. holds that 1) the lack of Canadian response to continued declines in U.S.-origin coho stocks is inconsistent with the conservation goals of the Pacific Salmon Treaty -- and that a viable WCVI coho fishery cannot be maintained without Canadian action; 2) the WCVI sport fishery, which is not covered under the current treaty, has greatly expanded in recent years, and must be addressed; and 3) an absolute WCVI catch ceiling for coho is inappropriate, since annual catch ceilings should be dependent on abundance. The U.S. argues that stepped harvest management, with steps of 0.9, 1.2, 1.5 million coho, should be applied to this fishery.

Under stepped harvest management, specific catch ceilings are established for specific ranges of fish abundance projections. Each catch ceiling would provide for adequate spawning escapement for all abundance levels within its associated range. This management method is designed to buffer against uncertainties and shortfalls in fish abundance. In years where harvests cannot be justified, due to extremely low fish abundance, a no harvest option should be exercised. A lack of forecast capabilities for coho stocks from Vancouver Island and Georgia Strait remains as an impediment to stepped harvest management. Without forecast of Canadian stock abundance, the WCVI troll fishery would be constrained solely by abundance forecasts for U.S. coho stocks.

**\* EDF recommends an aggressive research program aimed at forecasting the abundance of all salmon stocks regulated by the PST. EDF also recommends the**

adoption of abundance-based TACs for the WCVI fishery, with or without stepped harvest management, once abundance projections are available. Bans on directed harvest of weak stocks (or the restriction of harvest to low levels of incidental take) should be implemented when higher levels of harvest risk irreparable harm to those stocks.

#### Transboundary River Stocks

The Chapter covering transboundary rivers stocks (which expired after 1992) provided a framework for proportional allocation of sockeye salmon from the Taku and Stikine Rivers. For the Taku River run, Canada was entitled to harvest up to 18 percent of the total allowable catch (TAC) of sockeye originating in the Canadian portion of the Taku River. The allocation of Stikine River sockeye run was variable, based on the size of the TAC. In years of low runs, Canada was entitled to a higher portion of the TAC, while in years of large runs, the U.S. was entitled to a higher portion of the TAC. In both rivers, Canadian allocations of coho were fixed to an annual harvest ceiling. Little controversy exists concerning the management of these stocks.

Transboundary river stock management offers a precedent for the implementation of abundance-based TAC limits for all salmon stocks covered under the PST. The TACs currently in place for transboundary river stocks are calculated as the difference between salmon abundance and the number needed for adequate spawning escapement (the number of fish that should escape harvest in order to sustain the fishery). Thus, these TACs vary with abundance -- in years of high abundance, the TAC increases because the spawning escapement goal remains fixed.

**\*Transfers of percentage shares of the TAC could be used to adjust for changes in fishing capacity or in the distribution of transboundary river stocks.**

#### Snake River Stocks listed under the Endangered Species Act (the following section draws heavily from NMFS, 1993b)

Harvests of the endangered Snake River sockeye in PST fisheries (i.e. SEAK and Canadian) appears to be unlikely. Snake River sockeye migrate into the Columbia River during June and July, while sockeye harvest in SEAK does not begin until late June and early July. Similarly, the bulk of the Canadian sockeye catch occurs from mid-July through August.

Snake River Spring/Summer chinook also do not appear to be significantly impacted by PST fisheries. In SEAK, the majority of catch takes place during June and July, when maturing Snake River Spring/Summer chinook would have exited Alaskan

waters. There have been no records of tag recoveries for this listed stock in SEAK salmon fisheries. There have been some tag recoveries for this stock in Canadian fisheries. Overall the number of recoveries has been very low and exploitation in Canadian fisheries has been estimated to be less than 1 percent.

On the other hand, harvest impacts on Snake River Fall chinook are an important concern in PST fisheries. In SEAK fisheries, estimates of harvest impacts (relative to coast-wide harvest impacts) have ranged from 4.5 to 11.4 percent. In 1993, this was expected to be on the order of two or three hundred Snake River Fall chinook. The 1992/1993 fishery was ruled to be "not likely to jeopardize" Snake River Fall chinook by the U.S. National Marine Fisheries Service (NMFS) because harvest impacts were estimated to include a 3 percent reduction in the exploitation rate index relative to the 1986-1990 base period. In addition, NMFS considered information which suggested that the abundance of fish in the fishery may be higher than expected (post-season estimates of chinook abundance have been higher than preseason estimates for 5 consecutive years) (NMFS, 1994). Higher overall chinook abundance may result in additional reductions in the Snake River Fall chinook exploitation rate -- when overall abundance is high, the proportion of Snake River Fall chinook is reduced, and hence, harvest impacts on them are decreased. By reducing fall chinook mortality in non-retention fisheries, the SEAK fishery was able to maintain the PST harvest ceiling of 263,000 fish (NMFS, 1994). For 1994, the harvest ceiling for the SEAK fishery has been reduced to 240,000 in order to achieve a 3% reduction in the exploitation rate index relative to the 1986-1990 base period (NMFS, 1994).

Canadian fisheries are a significant source of harvest impacts on the Snake River Fall chinook. For the years 1985-1991, mortality for this stock in North/Central B.C. fisheries (relative to coast-wide fishing mortality) averaged 9.6 percent, while mortality in the WCVI (troll only) fishery averaged 28 percent. Although the PST established a fixed ceiling for WCVI chinook troll harvest at 360,000, the Canadians have in recent years managed the fishery to achieve the 1985-1987 average harvest rate. Consequently, WCVI troll catches were only 296,000, 196,000, and 339,800 in 1990, 1991, and 1992 respectively. In 1993, the U.S. pressed further for the WCVI troll fishery to be managed for the 1985 target harvest rate of 24%. The 1993 catch was 271,000 chinook. In addition, the U.S. pressed for a full accounting of catches taken by the WCVI sport sector, which was projected to be 48,700 in 1993. For 1994, the ocean escapement (fish returning to the mouth of the Columbia River) of Snake River fall chinook is projected to be at a near record low of 803 fish (in contrast to the 1986-1993 average of 1,936) (NMFS, 1994).

**Immediate reduction of harvest impacts is important to the survival and recovery of Snake River fall chinook. The harvest of depressed and listed stocks in PST**

**fisheries highlight the importance of bilateral agreements based on the principles of conservation and equity.**

**Puget Sound Petitioned Stocks**

Recently, a group of fishery biologists from the Washington Department of Fish and Wildlife (PRO-Salmon) petitioned NMFS to list 9 Puget Sound salmon stocks under the ESA. The petitioned stocks are:

North Fork Nooksack River spring chinook  
South Fork Nooksack River spring chinook  
Dungeness River spring chinook  
White River spring chinook  
Discovery Bay summer chum  
Hood Canal summer chum  
Lower Dungeness River pink  
Elwha River pink  
Baker River sockeye

In a recent joint assessment by the Washington state agencies and Western Washington Treaty Indian Tribes, these stocks were all listed as critical (i.e. at risk for significant loss of within-stock diversity, or even extinction) (WDF et al., 1993). For stocks such as the White River spring chinook, annual escapement has averaged only 100 individuals in recent years (WDF et al., 1992). These stocks are also harvested in mixed stock PST and/or other Canadian and Washington state fisheries. For example, Elwha River pink salmon are harvested in WCVI fisheries, U.S. and Canadian sport fisheries in the Strait of Juan de Fuca, and also in U.S. and Canadian preterminal commercial net fisheries which target the more productive Fraser River pink salmon stock (PROS, 1994).

**\* Harvest restrictions aimed at protecting these stocks may need to be addressed in future PST negotiations.**

Under current management plans, the WCVI chinook and coho troll fisheries (which opened on July 1) are managed to address Canadian stock concerns (DFO, 1994b). Catch guidelines for the WCVI troll fishery follow the previous PST annex harvest ceilings of 360,000 chinook and 1,800,000 coho (DFO, 1994b). As discussed earlier, abundance of southern U.S. coho stocks is at a record low. A WCVI troll harvest guideline of 1,800,000 coho is unrealistically high, and has the potential to cause overfishing of already depressed stocks.

\* This conflict highlights the importance of reformulating the PST so that it: 1) replaces fixed harvest ceilings with abundance-based total allowable catch limits which reflect the abundance and conservation needs of salmon stocks; 2) provides for harvest allocations which are responsive to changes in fish abundance; and 3) establishes an allocation framework which will promote the efficient use of resources, maximize economic benefits, and reduce conflict between the treaty parties.

**Recommendations for Action by the U.S. Administration and U.S. Non-Governmental Organizations**

*Short term options to address the conflicts at hand are needed. A comprehensive package of measures will be needed to reduce current conflicts and provide impetus for renewed Treaty negotiations leading toward an improved Treaty.*

**1. Implement strategies to require the North Pacific Fishery Management Council (NPFMC) and the Alaskan Department of Fish and Game (ADFG) to either reduce harvests of Fraser River sockeye, or compensate Canada for lost fishing opportunities.** Such strategies could include:

- A. Initiate a formal dispute resolution process aimed at framing a unified U.S. position.
- B. Increase the authority of the federal government to arbitrate conflicts between the States and Tribes in the interests of conservation and implementing the PST. Issue preemptive regulations to reduce Alaskan interceptions of Canada-origin fish if the NPFMC and/or ADFG fail to act, and if the dispute resolution process fails.
- C. Compensate Canada for lost fishing opportunities resulting from interception of Canadian-origin sockeye by SEAK fisheries in excess of allowable catch limits.

**2. Offer to provide for a full accounting of Fraser sockeye catches in SEAK fisheries against negotiated harvest ceilings, instead of limiting accounting to U.S. harvests in Washington State waters.**

**3. Invest more funds in effective watershed restoration programs to rebuild US-origin salmon stocks, so as to provide harvest opportunities for Canadian fishermen to balance incidental harvest of Canada-origin fish by US fishermen, and to rebuild U.S. salmon fisheries.** Economic assistance for unemployed U.S. fishermen should be targeted toward employing fishermen in watershed restoration projects and fish surveys.

**4. Where information on optimum escapement levels and stock distribution is limited, investments in basic research are needed.** Information from such research can aid in managing for optimum levels of fish production and conservation of ecosystem integrity, and identifying management options for reducing interceptions. Unemployed salmon fishermen and their boats could be contracted to assist in this research under the supervision of agency scientists.

**5. Offer to reduce harvests of Canadian sockeye by Washington state fishermen in exchange for a reduction in harvests of U.S.-origin chinook and coho by Canada (the magnitude of the reductions will depend on the relative value of chinook, coho, and sockeye), while retaining restrictions currently in place for US commercial and sport harvests of chinook and coho.** Approximately two-thirds of the chinook and one-half of the coho harvested in the WCVI troll fishery are of U.S. origin. Reductions in the harvests of chinook and coho in the WCVI troll fishery would allow increased numbers of threatened Snake River chinook and sensitive chinook and coho populations to spawn, providing scope for rebuilding U.S. populations. Immediate actions to enhance chinook and coho stock rebuilding will benefit U.S. commercial, sport, and tribal fisheries, as well as local and regional communities which have been impacted by depressed salmon populations.

*Other measures are necessary to prevent future conflicts, improve salmon conservation, and increase the economic benefits of the salmon fishery.*

**1. Harvest restrictions should be implemented to prevent overexploitation of relatively weak wild populations even when hatchery fish are abundant.** Abundant hatchery runs can withstand very high harvest rates. Relatively weak wild populations, which cannot sustain such high harvest rates, mix with hatchery stocks. Hence, harvest must be restricted to protect wild stocks, even when abundant hatchery runs increase pressure to increase harvest rates. Furthermore, interactions between wild fish and hatchery fish pose risks to wild fish genetics, survivorship, and reproduction (Chan and Fujita, 1994b).

**2. Establish abundance-based total allowable catch (TAC) limits, based on conservation goals.** Fixed harvest ceilings are an important impediment to conservation goals. The Pacific Salmon Commission's rebuilding program for chinook is based on the premise that fixed harvest ceilings will act in conjunction with increases in chinook abundance to rebuild chinook stocks in the long-term (CTC, 1992). However, the rebuilding program has resulted in little progress for many stocks (CTC, 1992). In order to achieve target harvest rate reductions for stocks under the rebuilding program, harvest ceilings must be responsive to changes in stock abundance and productivity (CTC, 1992). In addition, as conflicts over the catch of Canadian-

origin sockeye in the SEAK seine fisheries illustrate, fixed harvest ceilings also reduce management flexibility in the face of changing run size or distribution, and increase conflict between treaty parties when the magnitude of interceptions increases. As discussed by the U.S. Section with regard to the Fraser River fisheries, the allocation of TACs in percentage shares would allow for "fair sharing by U.S. fisheries in the case of larger runs, and, reciprocally, fair sharing of burden if runs decline".

**Fixed harvest ceilings should be replaced by Total Allowable Catch limits (TACs) based on the number of salmon that are present in a given year in excess of the number that must return to spawn in order to maximize recruitment for stocks that need to be rebuilt and maximize sustainable yield for more productive stocks (i.e., the escapement goal). Depressed stocks may require more spawners to maximize the number of recruits than to provide for maximum sustainable yield. The TACs should also allow sufficient numbers of fish to escape harvest to provide for adequate genetic diversity and to allow salmon to fulfill other ecological roles.** TACs based on recruitment or sustainable yield maximization should be based on escapement goals that have been increased by 10% to hedge against uncertainty until the actual escapement necessary to protect salmon genetics and the ecosystems which salmon are part of is known. Such TACs would increase or decrease with salmon abundance, and would be set at zero when abundance is projected to be close to the escapement goal. TACs should be set for a few indicator stocks distributed over the entire region of Pacific salmon harvest. Weak stocks such as the Snake River fall chinook, Oregon Coastal natural coho, and one or more of Washington state's critical stocks should serve as indicators, so that all salmon fisheries mixed with weak stocks are restricted to harvest levels that do not pose an irreversible risk to them. While such a policy would impose burdens on Canadian fishermen this year, changes in ocean productivity or salmon distribution may result in restrictions on US harvests to protect Canadian weak stocks. In any case, it is a sound conservation policy.

### **3. Allocate transferable percentage shares of the TACs to each treaty party.**

Transferable percentage shares could potentially provide a mechanism to reduce conflicts over allocations and interceptions, promote the efficient use of resources, and increase overall economic benefits. For example, in the SEAK District 104 seine fishery, sockeye from the Fraser River is an important bycatch species. Under a system of transferable percentage shares, bycatch quotas allocated to fishermen in Fraser Panel Area fisheries could be leased or sold to the SEAK seine fleet in order to cover the bycatch of Fraser sockeye. Under this system, Canada would be compensated for foregone harvest opportunities, while the U.S. would have greater flexibility to prosecute productive fisheries in which Canadian-origin fish are intercepted by acquiring sufficient percentage shares from Canada.

In other instances, quota shares for fisheries which have high bycatch rates and are constrained by bycatch levels could be sold, leased, or traded to "cleaner" fisheries, maximizing economic benefits while meeting conservation goals. For example, the terminal fishery for the productive Skeena River sockeye run is greatly constrained by management concerns for the depressed early Skeena coho. In addition, bycatch of Skeena River sockeye in the District 104 seine fishery has been a source of conflict between the U.S. and Canada. To reduce conflict, harvest quotas for Skeena sockeye could be leased, traded, or sold to "cleaner" fisheries (such as the SEAK fisheries) where Skeena sockeye can be harvested without increasing impacts on the depressed early Skeena coho run. Harvest quota shares would be traded, sold or leased to fisheries which hold the highest value for them, increasing overall economic benefits for both parties.

The equity principle of the Pacific Salmon Treaty could be preserved under a transferable quota share system. Each country would be compensated for fish originating in their watersheds, even if they did not actually harvest them. In addition, transfers of quota shares could be limited to one year trades or leases to prevent undesirable, permanent changes in the historic pattern of participation in these valuable fisheries.

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